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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

18 CR 224 (AJN)

6 ALI SADR HASHEMI NEJAD,

7 Defendant.
-----x

8 New York, N.Y.
9 March 5, 2020
10 8:50 a.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
17 Southern District of New York
18 JANE KIM
19 MICHAEL KROUSE
20 STEPHANIE LAKE
21 GARRETT LYNCH
22 Assistant United States Attorneys

23 STEPTOE & JOHNSON
24 Attorneys for Defendant
25 REID WEINGARTEN
BRIAN HEBERLIG
BRUCE BISHOP

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1 (Jury not present)

2 THE COURT: Thank you for the letter briefing on the
3 issues that might develop today that you sent in last night,
4 and I did receive a reply this morning from the government, so
5 I have reviewed those. It may be necessary to start to go
6 through the documents. I will work in the order that the
7 government included in its initial letter.

8 So 1333 is the first one, that's the CISADA document.

9 Go ahead, Mr. Krouse.

10 MR. KROUSE: Your Honor, I'm happy to talk about that
11 exhibit in particular, but the government does want to make an
12 overall objection to all of these documents.

13 As the Court knows, the defense moved to limit
14 Mr. Kim's testimony quite severely. The government worked with
15 the defense to limit it to the relevant portions of the
16 regulations at issue during the relevant time frame, and now
17 the defense is seeking to introduce all of this confusing
18 evidence to the jury that is outside that time frame, has
19 nothing to do with the charges in this case, and their claim is
20 is that this somehow impeaches Mr. Kim because he didn't talk
21 about it during his direct examination when that was the
22 agreement that the parties came to and that was consistent with
23 the Court's ruling.

24 So just overall this idea that it's somehow
25 impeachment of the witness to bring out all these other laws

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1 and statutes and regulations having to do with Iran and Iran
2 sanctions, of course there are a lot of sanctions against Iran,
3 Mr. Kim would have been qualified to talk about a lot of
4 different things, but based on the defense motion and based on
5 the Court's rulings and based on the government's, frankly,
6 view of the relevance of that testimony, we limited Mr. Kim to
7 the stuff that was relevant. So you can't put under the
8 umbrella of impeachment there's a lot of other stuff I didn't
9 mention.

10 THE COURT: On this one I asked specifically at a
11 certain point, and it was before objections came, was there any
12 surprise as to what Mr. Kim was doing about the law, and was
13 told that in fact the PowerPoint had been provided to the
14 defense and that the testimony would be largely following the
15 PowerPoint demonstrative. And so to the extent this is being
16 offered to impeach the idea that he focused on the particular
17 statute --

18 So who is taking, this Mr. Heberlig, Mr. Weingarten?
19 You had that in advance, right?

20 MR. WEINGARTEN: We certainly had the PowerPoint.

21 THE COURT: And there wasn't a suggestion that it
22 was -- or an objection to it as misleading for failure to
23 reference CISADA, correct?

24 MR. WEINGARTEN: Agreed.

25 THE COURT: And I don't have the document, but from

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1 what has been described we're talking about putting in a
2 substantial document, a statutory provision, for the point that
3 Mr. Kim didn't reference other provisions of law relevant to
4 Iranian sanctions?

5 MR. WEINGARTEN: In part.

6 THE COURT: Well, what else? For what other purpose?

7 MR. WEINGARTEN: Mr. Kim, in the PowerPoint and in his
8 testimony, talked about the effect of the sanctions in 2008
9 going forward, and CISADA in large measure is a response to
10 that. Yes, the sanctions were continued, and President Obama
11 did many other things as well, and we want to elicit that.

12 THE COURT: So the jury doesn't need the text of
13 CISADA to get that point, for example.

14 MR. WEINGARTEN: But the text contains it directly.
15 Maybe we redact, but --

16 THE COURT: Well, from what I understand of this
17 document, for very limited relevance and arguable waiver of
18 this point by you, because what's not okay, we have had a lot
19 of discussions about this issue, and the defense -- I checked,
20 and you later objected, and that raised other issues, but at
21 the point that we're doing this, I said no surprises, this is
22 what was anticipated?

23 MR. WEINGARTEN: Can I respond to that right now?

24 THE COURT: Of course.

25 MR. WEINGARTEN: So we go home last night, and in my

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1 experience as a criminal defense attorney, in the trials I have
2 had, you don't disclose beforehand. It's your rule, it's a
3 good rule, I'm happy to do it.

4 THE COURT: Everybody does it. And to the extent that
5 the concern was that they were going to prep Mr. Kim on it,
6 they wouldn't have if you had taken up your cross-examination
7 and he was under cross. So you don't get all of the
8 advantages.

9 MR. WEINGARTEN: Let me continue, if I may.

10 THE COURT: You may.

11 MR. WEINGARTEN: So we go back, and anything that's
12 remotely possible to be used in cross we identify, communicate
13 with the prosecutor, send the documents over, and I communicate
14 as well we're going to whittle down, very nice exchange,
15 whittle away, we whittled a little more and we proceed.

16 Now the way it works, the documents are sitting here,
17 maybe I like an answer, maybe I don't, maybe I use the
18 document, maybe I don't. You will hear when we go through the
19 documents one by one that we're going to withdraw some of them.

20 THE COURT: Are you withdrawing 1333?

21 MR. WEINGARTEN: No. Could I say one more point?
22 This is completely candid, we have a conversation yesterday
23 about how this trial is going to work out. It may be that we
24 don't put on a defense and it may be that we want to close to
25 the jury with some documents that are in evidence, and maybe I

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1 should have said that explicitly to the government. In my
2 experience, it's transparently clear how defense attorneys
3 think. If CISADA is important to the defense, we get it in.

4 THE COURT: Well, you get it in if it's relevant and
5 non-prejudicial and is not irrelevant and prejudicial, which is
6 on the grounds I said, in addition to them being the rules,
7 what I won't allow are -- most specifically I won't allow the
8 defense to make arguments about the law contrary to the Court's
9 conclusions unless there is some tie to Mr. Sadr's knowledge.
10 I don't think that's where we are on this point. So then the
11 question is what can you argue -- what do you want to argue
12 from CISADA?

13 MR. WEINGARTEN: The proffer, I said it in the opening
14 and I said it at sidebar as to where CISADA fits. And it's a
15 government exhibit. They want to introduce it to show the
16 knowledge of my client about the sanctions. In fact, he did
17 know about the sanctions from CISADA. It was important to him.
18 If we put him on, he will say just that.

19 And the important parts are that he thought for the
20 first time, and I think it's accurate, the President of the
21 United States imposed sanctions on the Iranian leaders for
22 doing terrible things to Iranian people. The document is
23 filled with wonderful statements about the Iranian people.
24 There was a feeling that the world had changed, and that's the
25 point we and want to make.

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1 THE COURT: What is the date that the world changes?

2 MR. WEINGARTEN: The document is 2010.

3 THE COURT: Go ahead.

4 MR. KROUSE: Your Honor, on this, I think there's a
5 lot of issues to unpack there. It's certainly not the case
6 that the defense, because they want to use something, it comes
7 in. I think the Court gets that.

8 But on the narrow point of what they can cross Mr. Kim
9 on, whether they can introduce CISADA in some other part of the
10 case, including their case in chief, the government would
11 object. We think it's confusing to introduce a whole other law
12 with legal text and all the language and then have the jury
13 sitting back there reading CISADA. That doesn't make any
14 sense. The Court is going to instruct the jury on the law.

15 THE COURT: Why did you produce the Clinton executive
16 order? What is the relevance of that to the jury?

17 MR. KROUSE: Your Honor, that executive order is just
18 the first one that establishes the authority to issue the ITSR,
19 and that everything that Mr. Kim was testifying about flows
20 from that.

21 THE COURT: Why do they need the text of the EO?

22 MR. KROUSE: The government is happy to strike that
23 exhibit and withdraw it. It wasn't necessary to offer it, and
24 so -- but was there was no objection by the defense. The
25 government is happy to strike that exhibit.

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1 But on the point of CISADA, that has no tether at all
2 to this case. That's a law that was specifically implemented
3 to continue sanctions against certain entities. It has nothing
4 to do with the ITSR. It didn't change anything about the ITSR.
5 The law applicable to this case stayed exactly the same.

6 So to have a document back there in evidence with the
7 jury reading another law that doesn't have anything to do with
8 this case, when the defense has made no proffer factually that
9 Mr. Sadr had anything in his mind about CISADA, if he wants to
10 take the stand and say this entire time I was thinking about
11 CISADA, he's welcome to do that, but even then the government
12 would object to putting in the actual law to have the jury sit
13 back there and read the law.

14 But on the narrow issue here of whether they can
15 cross-examine Mr. Kim on CISADA, the defense limited the
16 testimony of Mr. Kim. It's not impeachment for them to then
17 say: Aren't there a bunch of other laws that are relevant to
18 the Iran sanctions regime? It opens up this entire area of
19 inquiry.

20 THE COURT: With respect to the statutory provisions
21 that he discussed, frankly for reasons unclear to me, I sat
22 here in somewhat of amazement yesterday as it happened, with
23 respect to the relevant provisions of law that the government
24 introduced, how did the defense limit that?

25 MR. KROUSE: The defense limited -- and both, I will

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1 say the defense and the government together worked to limit it
2 to what was relevant.

3 Now I understand the Court's point, I think. Part of
4 this was the defense having noticed an expert on OFAC
5 themselves endeavoring to have this OFAC witness sort of
6 explain the relevant areas in this case that touch directly on
7 this case, and then allow the defense to cross-examine on those
8 relevant areas, thereby making an OFAC witness for the defense
9 unnecessary.

10 Now whether or not that was what the Court was
11 envisioning, it doesn't sound like it was, but that was
12 something that was worked out by the government and the
13 defense. And I think there is something here to -- the defense
14 can't -- there's a couple times now where the defense has said
15 that's prejudicial to us, and then the Court ruled for them and
16 then they turned around and have done the exact same thing,
17 like saying that terrorism is such a prejudicial word and then
18 opening on it and talking about it constantly.

19 THE COURT: I said this yesterday, they can't object
20 to documents coming from in from the government and then try to
21 get the documents in. If they're saying these documents can't
22 come in because they say terrorism but we'll put the documents
23 in, that's a problem, but it's different to --

24 MR. KROUSE: That's what is happening.

25 THE COURT: What do you mean that's what is happening?

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1 MR. KROUSE: That's what is happening, where the
2 government and the defense worked together to limit a witness'
3 testimony, and then they can get up and say, for impeachment
4 purposes: Why didn't you mention this law? Why didn't you
5 mention this law? Why didn't you talk about these SDN
6 designations? Why didn't you talk about CISADA? Why didn't
7 you do this? Why didn't do you that? If that is what it is
8 being offered for for this witness, that's highly improper.

9 Now if the defense has some theory why CISADA is
10 admissible in their case, the government opposes it and we
11 object for all the reasons I stated, but it can be taken up on
12 the defense case. For the purposes of this witness, there is
13 absolutely no relevance to bringing -- even mentioning CISADA
14 with this witness, because it's not impeachment, and so it has
15 no purpose on -- it's outside the scope of direct, and I still
16 have not heard from the defense what their theory is for why
17 this would be admissible on this cross-examination.

18 THE COURT: Mr. Weingarten?

19 MR. WEINGARTEN: Can I respond to the initial parts?

20 THE COURT: You may.

21 MR. WEINGARTEN: Judge, here's the story here, the
22 government's opening OFAC regulations are crystal clear and
23 simple.

24 THE COURT: The quote was, "It's not complicated."

25 MR. WEINGARTEN: We believe anything but.

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1 THE COURT: Which again, I was quite surprised, given
2 where we have been.

3 MR. WEINGARTEN: I understand. So that's how they
4 opened. We understand completely, we have had 10,000
5 conversations about this, that when it comes to how you're
6 going to instruct the jury, we can't introduce evidence, we
7 can't argue to the jury that you're wrong and there's a
8 different interpretation and that's where they should go.

9 THE COURT: Again, unless it's tied specifically -- I
10 want to be clear, I'm not saying there can't be a suggestion
11 that Mr. Sadr had in his head another interpretation of the
12 law, so long as it's not just made up from thin air and it's
13 connected to him.

14 MR. WEINGARTEN: And I said to you yesterday and I'll
15 say it again, he didn't sleep with 516, so we're not going to
16 go there.

17 Number two, there's a split in the defense camp about
18 which way is consistent with your ruling. Can't introduce the
19 regs. And I wasn't sleeping when they introduced the Clinton
20 order, I wanted a little more room. Okay. Others believe
21 can't introduce the orders but you certainly can cross-examine
22 this guy inconsistent with their opening statement, that this
23 is simple, there are a zillion documents, they are
24 inconsistent, they change constantly, they're political. I
25 don't know whether or not I can do that right now.

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1 And I would say --

2 THE COURT: So you are raising a point which you have
3 not previously raised, right, a purpose counter to the
4 government's suggestion of the simplicity of the sanctions,
5 which goes to Mr. Sadr's awareness, is sort of a general theory
6 of complicatedness, which is not making a specific legal
7 argument about legality.

8 MR. WEINGARTEN: Right.

9 THE COURT: So I think that might have been fine
10 previously, not raised it before, certainly seems fine in light
11 of the government's opening. But there's a limit, and 403 is
12 the limit, as to how you can do that.

13 MR. WEINGARTEN: Since I'm here, can I raise it to the
14 next level?

15 In the PowerPoints they don't quote -- then don't say
16 this is 410, this is 204, but they take language from both
17 those rules. How can it be if they do that that I can't take
18 204 or 410 and ask him questions about it?

19 MR. KROUSE: No one is saying he can't ask questions
20 about the relevant regulations, your Honor. Again, even --

21 THE COURT: So you're not objecting to asking him
22 questions about regulations that he testified to suggest
23 complications or he that oversimplified or the like.

24 MR. KROUSE: I think that's right, because that goes
25 to the witness's credibility as an enforcement officer. So we

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1 understand, I think, the limits of what -- we're not saying he
2 can't cross-examine or bring out defense themes, it's just the
3 way in which he's doing it with CISADA in particular that's
4 really outside the scope.

5 THE COURT: Why?

6 MR. KROUSE: Your Honor, there's a distinction again
7 about the defense being able to pursue themes, both on
8 cross-examination and in their case in chief, with their
9 expert. And we can take up what is appropriate at a later
10 time, but what is appropriate with this witness I think is very
11 different, because the parties have agreed to what he was going
12 to testify about. It's improper cross of the witness to then
13 try to imply that there's some sort of credibility problem with
14 the fact that he didn't mention CISADA when that was agreed
15 that that wouldn't be part of the case, because it's not part
16 of the case.

17 THE COURT: So your representation is the defense
18 agreed Mr. Kim would not testify about CISADA.

19 MR. KROUSE: CISADA never came up. CISADA is not part
20 of this case. CISADA has to do with blocked entities.

21 THE COURT: That's the question. They're obviously
22 trying to introduce it, so just saying it's not part of the
23 case --

24 MR. KROUSE: It's not part of the law in this case, so
25 it's not going to be anything that your Honor is going to

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1 instruct the jury on. So with respect to the law itself --

2 THE COURT: But to my point a moment ago, neither is
3 the Clinton EO.

4 MR. KROUSE: The Clinton EO is the fountainhead of the
5 entire --

6 THE COURT: The jury is not going to get instructed on
7 the Clinton EO.

8 MR. KROUSE: And government will strike that exhibit.
9 But I think there is a very big difference between the Clinton
10 EO which is tied to the law in this case. Now maybe the
11 government should not have introduced it, so we're happy to
12 strike it and the jury will never see it. They saw the first
13 page and it was just cited, it just showed them that President
14 Clinton issued it. So we're happy to strike the exhibit and
15 happy to strike the testimony referencing it. But it's not
16 apples to apples to say that CISADA is the same thing. It's a
17 completely different law.

18 THE COURT: It's not saying it's the same thing, the
19 question is just --

20 So Mr. Weingarten, one, the representation is you had
21 every opportunity in the negotiations over Mr. Kim's testimony,
22 given concerns that had been discussed, to have him front
23 CISADA as part of the sanctions regime and you didn't, right?

24 MR. WEINGARTEN: No. I mean it could be --

25 THE COURT: Is it right that you were negotiating

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1 this, and with respect to the question of what the relevant
2 area of law would be, that you would discuss, those were active
3 discussions?

4 MR. WEINGARTEN: I want to be perfectly clear:
5 Certainly not with me. I'm looking at my colleagues and I'm
6 getting a head shake here.

7 There were discussions, and what my primary feeling
8 is, every time I turned around there was a new PowerPoint
9 coming down the road with changes. I didn't have any sense
10 that I had any ability to influence what was being put in that
11 PowerPoint.

12 MR. KROUSE: They moved on it, your Honor, we had
13 extensive discussions about it in the motions in limine phase.
14 We sent them multiple versions of the PowerPoint to put them on
15 notice about what we intended to do. We talked about whether
16 we would will put the language of the regs in front of the jury
17 and we told the defense we did not intend to do that. They
18 didn't indicate one way or the other what they intended to do,
19 but during all of those conversations it never came up: We
20 also think Mr. Kim should talk about CISADA. That's the core
21 of the government's objection.

22 The other objection is CISADA is a completely
23 different rule. Under 403 it's going to lead to jury confusion
24 to have the document in front of them, so we object very
25 strenuously that the document should come in as a defense

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1 exhibit for any purpose. But even on this witness, questioning
2 him about CISADA is unfair and outside the scope of the direct,
3 because to the extent it's being used just to impeach Mr. Kim's
4 knowledge, it's sandbagging the government to limit his
5 testimony to a certain area and then say, well, isn't it true
6 that you don't know what you're talking about because you
7 didn't mention this completely irrelevant statute.

8 THE COURT: So Mr. Weingarten, is the purpose being
9 offered here for impeachment?

10 MR. WEINGARTEN: No.

11 THE COURT: It's not, because he didn't talk about
12 CISADA.

13 MR. WEINGARTEN: No.

14 THE COURT: So why do you get it in through this
15 witness?

16 MR. WEINGARTEN: Because he took the stand and he
17 testified these are the relevant documents. It's not
18 cross-examination to say: Isn't it true that there were
19 others, for a variety of reasons, CISADA being one of them.

20 And then number two, he talks about what happened in
21 2008 going forward. And what I would like to do is say: It is
22 true, is it not, that CISADA strengthened the regulations
23 against Iran in very important ways and did a number of other
24 things? And I want to elicit it that way.

25 THE COURT: And what are you going to argue to the

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1 jury from that?

2 MR. WEINGARTEN: It depends entirely on what our case
3 looks like. It depends entirely.

4 MR. KROUSE: It's not --

5 THE COURT: I get that, but that's not a sufficient
6 answer for purposes of this witness. You don't get to do
7 anything you want with respect to this witness.

8 MR. WEINGARTEN: Of course, I understand that.

9 THE COURT: So you're not doing it to impeach him.

10 MR. WEINGARTEN: Clarification, the mildest of
11 impeachment: You didn't include this. Isn't it true that the
12 following is contained in there?

13 THE COURT: So if the hook for getting it in through
14 him is mild impeachment because you didn't include it, then I
15 think that puts us squarely in what happened in the
16 negotiations with the government over the limit of his
17 testimony.

18 MR. KROUSE: And the motions in limine --

19 MR. WEINGARTEN: None is the answer.

20 MR. KROUSE: The motions in limine sought to limit his
21 testimony, and he testified about the relevant portions.

22 Now it sounds to me like the defense wants CISADA for
23 their own defense purposes. It's outside the scope of the
24 direct. They can introduce, or try to --

25 THE COURT: It is for their own purposes, which

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1 usually a defense case doesn't exist other than what comes in
2 through cross, so that's not unusual, so long as it's within
3 the scope of direct. But for the negotiation over the scope of
4 Mr. Kim's testimony, it would be within the scope of direct.
5 There's still the 403 issue, but that's true, so the question
6 is just --

7 MR. WEINGARTEN: There was no negotiation, Judge.

8 THE COURT: What do you mean there was no negotiation?

9 MR. WEINGARTEN: I certainly didn't negotiate with
10 them about anything, and my colleagues are echoing that. This
11 negotiation, this is fantasy.

12 MR. KROUSE: Your Honor, once again there was
13 extensive motions in limine practice on Mr. Kim's testimony.

14 THE COURT: Yes.

15 MR. KROUSE: The government stated that we would work
16 with the defense to limit his testimony to the relevant
17 portions, we provided the PowerPoint --

18 THE COURT: I need clarity. You mean with respect to
19 the references to terrorism and the like?

20 MR. KROUSE: No, with respect to what he would testify
21 about, what was within the scope of the relevant testimony in
22 this case.

23 THE COURT: You didn't much fight about Mr. Kim.

24 MR. KROUSE: There were a lot of behind-the-scenes
25 discussions, so a lot emails sent to the defense, different

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1 versions of the PowerPoint in which the government disclosed
2 well in advance and said this is what we're thinking about
3 introducing with Mr. Kim, multiple versions. We did have
4 discussions about whether the regulation, the text of the
5 regulations, would go in. We told the defense we did not
6 intend to use the text of the regulations.

7 It turns, I guess, on what the defense considers
8 negotiation, but in the government's view it was discussing
9 with the defense in good faith what the proper scope of this
10 witness's testimony was in light of us calling a witness from
11 OFAC and them noticing a defense expert from OFAC, and multiple
12 times the defense said, with respect to the defense OFAC
13 witness, it kind of depends on what your OFAC witness testifies
14 to.

15 So we said we would limit the scope of the testimony
16 to things that were directly relevant to this case, the ITSR,
17 which the judge, your Honor, is going to instructed the jury
18 on, that regime, what it constitutes, what it is. And CISADA
19 is a distraction in so many ways because Mr. Weingarten keeps
20 saying it's part of this, but if you say it's part of this,
21 there's a lot of Iranian sanctions regulations. They regulate
22 the aircraft industry, they regulate the oil industry, there's
23 a lot of stuff that's part of this, if you want to define
24 "this" as all of Iran sanctions.

25 But with respect to this case, it's 203, 204, and 410.

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1 And it's not all that complicated, your Honor, honestly, and
2 that's how we opened, and I think that's how we're going to
3 close. It's not that complicated on the law.

4 THE COURT: This is the state of mind question, and
5 it's a fine blade here for purposes of whether or not Mr. Sadr
6 violated sanctions. I get the government's argument that it's
7 simple, but because the defense is he didn't know that
8 simplicity because it's buried in a mountain of complexity,
9 that is relevant to state of mind and they get to make those
10 arguments. I just don't think that answers the question,
11 necessarily.

12 MR. KROUSE: I think there's room here for some sort
13 of compromise. One, I will say the defense has noticed an
14 expert, they say their defendant might testify, based on the
15 opening it seems like he's going to testify.

16 THE COURT: I will say there have been proffers that
17 allowed a lot of stuff in opening that is premised on evidence
18 that the defense is going to get in, and I think it includes
19 the expert, the OFAC expert.

20 You have an OFAC expert?

21 MR. WEINGARTEN: We do.

22 MR. KROUSE: Of course they're not bound by that
23 commitment, but based on everything that's happening up to this
24 point and based on the opening and all the personal details
25 that came out in the opening, we're not sure how that is coming

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1 in without the defendant testifying. And if the defendant is
2 going to testify then the defense will have more than ample
3 opportunity, through both their OFAC witness and through the
4 defendant, to introduce evidence, competent evidence about his
5 state of mind and whether -- and the fact this is a complicated
6 area. That is a defense case. But with respect to this
7 witness, it's excluded under 403, the government believes it's
8 outside the scope, and certainly the defense exhibit, the
9 document itself of CISADA, should be precluded.

10 MR. WEINGARTEN: Judge, I had a senior moment in that
11 there's another piece to the proffer about what would happen if
12 this comes in, and may I offer it here as well?

13 THE COURT: Yes.

14 MR. WEINGARTEN: Another part of CISADA was a change
15 of focus, as the Court knows, and I may or may not have said in
16 opening, Reagan was imports, Clinton was exports, then there's
17 a trade embargo, gross measures. Obama saw the world
18 differently and he wanted targeted sanctions directed at the
19 wrongdoers, and that was a very significant part of CISADA, not
20 against citizens or private entities operating outside of Iran.

21 THE COURT: And you're going to argue what to the
22 jury?

23 MR. WEINGARTEN: That the regime in power at the time
24 of the sanctions in this case was a regime that was not
25 interested in punishing people from Iran who were working

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1 outside of Iran if there's no connection to Iran.

2 THE COURT: That's an argument about the law. That's
3 a nullification argument and an argument about the law.

4 MR. WEINGARTEN: It's a state of mind.

5 THE COURT: No, I precisely asked you just now and you
6 didn't make it as a state of mind argument, you made it as a
7 fact in the world argument, a legal fact in the world argument.

8 MR. WEINGARTEN: But the preface to all this is the
9 government is introducing CISADA for the purposes of imputing
10 knowledge to him. This is part of the knowledge.

11 MR. KROUSE: I will correct the record on that, the
12 government is not introducing CISADA.

13 THE COURT: That's clear. You're trying to introduce
14 CISADA.

15 MR. WEINGARTEN: I thought it was a government
16 exhibit.

17 MR. HEBERLIG: It may be change of heart, it was on a
18 list of exhibits we got last night from the government.

19 Mr. Sadr received an email with CISADA attached to it that he
20 forwarded to another address and: Says please print out. So
21 it's a government exhibit that we understand --

22 MR. KROUSE: I don't believe we said we were going to
23 introduce it. It's a marked government exhibit in the sense
24 that it's an email that Mr. Sadr received. I will note also
25 that the attachment on the email is different than the defense

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1 exhibit. There are different versions of the reports. But the
2 government is not introducing it, there's no reason to
3 introduce it, there's no marked exhibit. To the extent the
4 government said we're intending to use it, it was an error or a
5 typo, but I don't think that we said we were going to use it,
6 but if the defense corrects me, then --

7 MR. HEBERLIG: Give me 30 seconds, I will find it for
8 you.

9 MR. KROUSE: But, your Honor, the fact remains we're
10 not introducing it. It's not relevant with respect to this
11 witness in the least. Mr. Weingarten has not been able to
12 proffer a legitimate reason to ask this witness about that
13 statute. I'll just note what CISADA is, because I think
14 there's a little bit of misleading content in what the defense
15 is saying.

16 The comprehensive ban on --

17 THE COURT: And I think -- am I right in saying I
18 never heard of CISADA until whatever came in right before
19 trial, it wasn't ever part of the in limines.

20 MR. KROUSE: The government didn't have any idea that
21 the defense was going to try to introduce an entirely different
22 statute.

23 I will say that it's misleading to say that CISADA is
24 relevant to his state of mind because it made things easier.
25 In fact, it was a statute to tighten the sanctions against

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1 Iran. The comprehensive ban was already in place and had been
2 in place since 1995, the 2008 U-turn was revoked, all that is
3 ongoing through the entire time period and still in place
4 today.

5 CISADA was an effort to make it harder for certain
6 directly -- the most culpable parts of the Iranian government
7 and industry, the SDNs to make it harder and block their
8 property. It has nothing to do with this case, it has nothing
9 to do with Mr. Sadr. The comprehensive ban was in place this
10 entire time period, and that's what your Honor is going to
11 instruct the jury on.

12 We would oppose any introduction of CISADA, period,
13 but in particular, if we want to use our time on this witness,
14 it's more confusing than probative by far, it's to be excluded
15 under 403, any reference to it, and it's outside the scope of
16 the direct testimony because witness was testifying about the
17 laws and regulations relevant to this case.

18 To the extent the defense wants to draw out an
19 argument later to the jury that these were complicated
20 regulations, they can do that with their OFAC witness,
21 possibly, if they -- but still the government would oppose
22 introducing CISADA. They can bring out the idea that this is a
23 complicated regime both with the defendant when and if he
24 testifies, and with their OFAC witness or with any other
25 witness.

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1 THE COURT: They could bring out that it's a
2 complicated regime with this witness, why not?

3 MR. KROUSE: I think they could ask that question. Is
4 it fair, Mr. Kim, that the sanctions against -- there are a lot
5 of different regulations against Iran? I think he will say yes
6 to that.

7 Is it fair to say it can be complicated? I think
8 that's probably fair, too, but that's, I think, as far as he
9 should go with this witness, because I think it would be unfair
10 and outside the scope to say well, why didn't you testify about
11 all these other things that were irrelevant to this case?

12 There's a lot of stuff that the Iran sanctions regime
13 on whole regulates. They regulate specific industries, they
14 regulate specific people, specific entities, there's CISADA,
15 there's the ITSR, there's a lot of stuff. Just allowing a free
16 ranging inquiry on this witness about all the other stuff,
17 Mr. Weingarten hasn't explained how that is impeachment of this
18 witness, and it's clearly confusing to the jury.

19 So I think under 403, outside the scope, relevance,
20 there's a lot of different objections with respect to this
21 witness.

22 THE COURT: Was the government's understanding of the
23 negotiation over the scope of Mr. Kim in part to eliminate what
24 the defense OFAC witness would have to do?

25 MR. KROUSE: In our minds, and I can't speak to what

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1 the defense thought was happening if they say that's not what
2 was happening, but the government, in our minds, was disclosing
3 in a very timely manner, two weeks before trial, a presentation
4 that we were proffering to the defense was going to outline the
5 government's direct testimony with Mr. Kim.

6 We did have discussions, explicit discussions about
7 the defense OFAC witness and what they thought that OFAC
8 witness was adding. And the response was it depends on what
9 Mr. Kim testifies to, and we pointed to the PowerPoint and we
10 gave them different versions as we refined it and met with the
11 witness, but the discussion was: What is Mr. Kim going to
12 testify about and what is the defense expert going to add?
13 During those conversations CISADA never came up. As your Honor
14 pointed out, CISADA was never moved on. An effort to put an
15 entirely different law that has nothing to do with this case in
16 front of the jury is something that should be flagged I think
17 in advance and wasn't here.

18 So with this witness, asking about --

19 THE COURT: Okay, you're going in circles. Let me
20 hear from the defense.

21 MR. HEBERLIG: Judge, there was motion practice. They
22 moved to admit the CISADA email we're talking about. It's
23 relevant to his state of mind and knowledge of the sanctions.
24 It's Government Exhibit 2207, the attachment is 2207A. In an
25 email from Ms. Lake last night 5:07 they designated it to be

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1 read through two different paralegal readers.

2 The email in question is Ali Sadr, to a different
3 address, please print, and attached to it is CISADA. We have
4 always understand that they were going to put it in as evidence
5 of his knowledge that it existed. So there was no point to be
6 litigating this before.

7 And the idea we negotiated over the PowerPoint is
8 simply not true. We received it and we evaluated it for
9 whether there were objectionable material in there, but we
10 certainly never understood the government giving us an
11 opportunity to shape the direct examination of their expert
12 witness. We did not offer suggestions of what we thought
13 should be in their PowerPoint because that's the purpose of
14 cross-examination. But this document has been a central part
15 of the case. They moved in limine to admit this document.

16 MR. KROUSE: It's a different document.

17 MR. HEBERLIG: It is not a different document.

18 MR. KROUSE: Our document is 78 pages and defense
19 counsels' is -- ours is 72 and theirs is 48. The government is
20 not admitting the document and/or the email. It was marked.
21 We marked all -- just to be clear with the Court, we marked
22 every exhibit -- every piece of documentary evidence from the
23 email accounts that was not suppressed. So this was one of the
24 emails that was marked as responsive to the search warrant.

25 THE COURT: The representation is that last night it

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1 was suggested that --

2 MR. HEBERLIG: Twice.

3 MR. KROUSE: Ms. Lake informed me that was a mistake,
4 that was typo. We are not introducing that exhibit.

5 MR. HEBERLIG: It's not a typo, it's in here twice.

6 THE COURT: Mr. Heberlig, as you're well aware, I give
7 everyone an opportunity, but it has to be orderly and calm.

8 MS. LAKE: I'm happy to speak to this.

9 THE COURT: Go ahead.

10 MS. LAKE: It was taken from an old list. It was a
11 mistake. We were scrambling to get this to them 30 minutes
12 after we left court. It was an error.

13 THE COURT: But the suggestion has been earlier in the
14 litigation that the government was going to move this in?

15 MR. KROUSE: Well, there was a representation that in
16 the motions in limine we litigated as an example this exhibit
17 as being admissible for a purpose. That doesn't mean the
18 government, as it understands the case, that we wish to
19 present, as we understand the defense case, that we're going to
20 actually offer it, but I think -- some of this I think is a
21 distraction from the question of whether they can question
22 Mr. Kim on this point.

23 And also --

24 THE COURT: But here's the thing, so I have 403
25 concerns about the document, but in terms of cross-examination,

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1 but for what you represented as the agreement negotiation,
2 which seems in question and probably unresolvable by me, it is
3 within the scope.

4 MR. KROUSE: I think to draw out this theme of
5 complexity, the government agrees.

6 THE COURT: Well, that's a relevance question, that's
7 not a scope question. It's within the scope because you asked
8 him about the relevant sanction laws. Now you're saying it's
9 not fair to have negotiated that it would be limited testimony
10 and then get up and say you didn't say anything, that's a
11 separate question. But for that, it's within the scope. So
12 the scope -- so I can't resolve the negotiation question. To
13 the extent it's a scope question, overruled. So then it's a
14 401 -- well, it's really a 403 question.

15 MR. KROUSE: I think it is a 403 question, your Honor.
16 I will say the Court is saying it's unresolvable whether --
17 "negotiations" might be a loaded term and the defense is
18 objecting to the implication that we sat down at a table and
19 hashed out his testimony. What I will say is the government in
20 its best efforts tried to limit Mr. Kim's testimony to what was
21 relevant to this case, from a legal standpoint. So the ITSR,
22 the regulations that the Court is going to instruct on, the
23 overall regime and what his role is as an enforcement officer,
24 what it means to license something, what it means to block
25 property, just these kinds of general outside the ken of the

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1 average jury definitions. And that was the testimony.

2 Now to introduce into that after the defense has been
3 on notice about what that overall testimony would be, I do
4 think it's unfair impeachment of the witness to then say well,
5 you didn't bring up all this other stuff, including CISADA when
6 he knows about CISADA, could have easily testified about
7 CISADA, could have easily testified about a bunch of different
8 things.

9 THE COURT: How about this as a resolution,

10 Mr. Krouse: Although you finished your direct, you do a final
11 question that sets up there's a lot of other statutory
12 provisions in this field, some question that suggests that you
13 have focused the questions on specific stuff so there's no
14 sting to impeachment. Then I think we get to the relevance
15 question and why it comes in through this witness and what
16 you're going to do with it and the 403 question with respect to
17 the document.

18 I don't think I'm going to let the document in through
19 this witness. I still don't have it in front of me, but
20 substantial complicated statutory provisions, which when I
21 asked you a moment ago, Mr. Weingarten, you didn't make a
22 knowledge argument, you made a law argument, and I'm not
23 allowing that.

24 MR. WEINGARTEN: I missed that.

25 THE COURT: You didn't make a knowledge argument, you

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1 made a law argument, that you will argue to the jury look at
2 this provision of CISADA, it didn't cover this, it narrowed or
3 broadened or whatever you're going to do, that's a legal
4 argument that I won't allow.

5 Again, as I said all along, to the extent we're
6 talking about things being a general argument about
7 complication, about what was in Mr. Sadr's mind, that's one
8 thing.

9 MR. WEINGARTEN: Can I try one more time? Perhaps I
10 misspoke or misargued. The premise -- I start with the idea
11 that everything about CISADA is in my client's mind. A
12 significant part of CISADA, which is objectively true, is there
13 was a new focus on individual wrongdoers, the government of
14 Iran, SDNs and the IRGC. That is an objective fact known to my
15 client. The logical conclusion from that is this
16 administration is not enforcing the sanctions against Iranians
17 who are outside of Iran doing business. It's an important
18 piece. It's objectively true. It was a very important part of
19 the statute. There are a thousand -- I'm exaggerating, but not
20 by much -- people who touted that, and it was known to my
21 client.

22 MR. KROUSE: I think that's a defense argument. I
23 don't know what the evidence is of that. Mr. Weingarten is
24 asserting that that was within his client's mind that entire
25 time. It sounds like he will testify and say that. But with

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1 respect to this, there's no prejudice to the defense in being
2 limited on that area with this witness. It's, I think,
3 precluded under 403, it's not relevant to this witness, and I
4 think this idea of complexity they can bring out with this
5 witness.

6 THE COURT: I will allow questioning on complexity.
7 I'm not letting the document in through this witness for the
8 reasons we discussed, but at the moment, for 403 reasons, in
9 light of -- the line between a legal argument being made to the
10 jury, which is the province of the Court, and what Mr. Sadr may
11 have thought or concluded is a fine one, and my conclusion is
12 it tips over to 403 prejudice to do what Mr. Weingarten
13 suggested.

14 So I will allow questioning on complexity but not this
15 document through this witness. We can take up whether it will
16 come up through your OFAC witness.

17 What else do you want to do?

18 MR. WEINGARTEN: Go home.

19 THE COURT: Okay. So we have all our jurors, but
20 unfortunately that's one. We'll move through these quickly.

21 On 1334 there's a timeframe question, so I want to
22 hear from the defense whether they're seeking 1334 because it
23 has anything to do with the timeframe of the charged
24 transactions.

25 MR. WEINGARTEN: It's the witness's boss.

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1 THE COURT: But it happened in 2016, so please answer
2 what it has to do with proof with respect to time frame of the
3 charged transactions.

4 MR. WEINGARTEN: That the evidence being offered on
5 page 31 was as applicable during the alleged conspiracy as it
6 was when he said it. There's no change.

7 He was the director of OFAC throughout the entire
8 period.

9 THE COURT: Is there any sense of what time frame he's
10 talking about? You're inferring from the fact there's no
11 change.

12 MR. WEINGARTEN: Yes.

13 THE COURT: Mr. Krouse.

14 MR. KROUSE: Your Honor, it's unclear to me how this
15 is relevant. It's, first, outside the time frame. I will add
16 to that that this was a congressional hearing about the JCPOA,
17 which the government moved on and the defense said they had no
18 intention to bring up anything about it. It's completely
19 confusing to the jury. It's a 70-page document of a hearing
20 committee. Having the jury sit back in the jury room and read
21 a 70-page document about the JCPOA I think squarely falls
22 within what the government moved on in limine and the defense
23 said they had no objection to and the Court ruled was out.

24 So to the extent they're seeking to introduce this
25 exhibit, we object on hearsay ground, relevance grounds, 403

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1 grounds, and to be frank, I still don't understand what the
2 defense is saying why this comes in.

3 THE COURT: What do you want to do with this,
4 Mr. Weingarten?

5 MR. WEINGARTEN: Judge, it's page 31. Obviously we
6 would redact the one page and that would be the exhibit.

7 THE COURT: You want to use page 31?

8 MR. WEINGARTEN: Yes.

9 THE COURT: For what purpose?

10 MR. WEINGARTEN: I just may read it. Our sanctions
11 control what U.S. actors can do and what they cannot do. It
12 governs the conduct of U.S. actors anywhere they reside in the
13 world, blah, blah, blah. Our sanctions, on the other hand, do
14 not control the actions of non-U.S. persons, whether or not the
15 currency they are using is dollar, Euro, pound or the yen.

16 That paragraph is critically important. It was
17 inconsistent with what the witness said, and I want to hear
18 what he has to say when he sees what his boss wrote.

19 MR. KROUSE: It is not inconsistent. As the Court
20 knows, the government's theory is that the U.S. person in this
21 case is the U.S. banks. That was briefed extensively in the
22 motions to dismiss, it was briefed extensively in the motions
23 in limine. This is not inconsistent.

24 It goes on. Mr. Weingarten didn't read it, but it
25 says it governs the conduct of the U.S. actors anywhere they

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1 reside in the world. So, for example, a branch of a U.S. bank
2 in Europe and East Asia has to behave like a U.S. person here
3 in Washington or here in New York. JP Morgan, Citibank, those
4 are banks with branches in New York, the payment letters that
5 Mr. Sadr is on asks for payments from DUCOLSA through the JP
6 Morgan Chase and Citibank U.S. banks. He caused a violation of
7 U.S. sanctions by a U.S. person. This is not inconsistent in
8 the least, it's well outside the timeframe, it's in 2016, it's
9 not relevant, it's confusing to the jury, and it should be
10 excluded. It definitely shouldn't come in through this
11 witness.

12 MR. WEINGARTEN: The magic words: That means banks in
13 Europe, Japan and China all hold dollars in their vaults. Our
14 sanctions don't extend to those dollar bills.

15 The clear implication to the opening and the witness's
16 testimony yesterday: You deal with dollars in Iran, you're
17 cooked. His boss says directly the opposite.

18 THE COURT: So therefore, the motion to dismiss should
19 be granted.

20 MR. WEINGARTEN: No, I want to see, maybe he will
21 changes his testimony.

22 MR. KROUSE: I still don't understand. But the
23 payment letters, as your Honor will see today when we introduce
24 them, specifically say JP Morgan, Citibank in different payment
25 letters, the U.S. branches, and all of the payments did in fact

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1 transit the United States and go through New York. So it's
2 confusing to the jury.

3 THE COURT: So there's timeframe issue, there's a 403
4 issue, there's a 401 issue. I sustain on 1334.

5 1335. There's an authentication question. What is
6 1335?

7 MR. WEINGARTEN: This is another document from a prior
8 OFAC head, it's again --

9 THE COURT: How will it be authenticated?

10 MR. WEINGARTEN: My understanding is it's part of
11 their website, and I assumed he could give that to me.

12 MR. KROUSE: Who could give it to him?

13 MR. WEINGARTEN: The witness.

14 THE COURT: You're going to seek to have it
15 authenticated through Mr. Kim?

16 MR. WEINGARTEN: Yes.

17 THE COURT: Could I see it?

18 What are you going to with this?

19 MR. WEINGARTEN: It's a statement of a high-ranking --

20 THE COURT: This document with text deleted, text
21 teated, text deleted was on the website? Yes or no.

22 MR. WEINGARTEN: Yes.

23 MR. BISHOP: We could send a link.

24 (Continued on next page)

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1 THE COURT: The purpose it's being offered for?

2 MR. WEINGARTEN: Again, high-ranking OFAC official,
3 offering his view about the extent of 204, which we believe is
4 inconsistent with the testimony that was received yesterday.

5 MR. KROUSE: What part is inconsistent, your Honor, if
6 we can inquire.

7 THE COURT: What specifically?

8 MR. WEINGARTEN: The witness stated over and over
9 again in very broad terms that, in essence, doing business with
10 Iran was verboten under the sanctions. This a specific
11 instance where the OFAC boss offers a view that is inconsistent
12 with that as it relates to a specific case.

13 MR. KROUSE: Where does it say that?

14 THE COURT: What language are you going to pull from
15 here, the letter?

16 MR. WEINGARTEN: You have to read the entire letter.
17 It is a letter to Newcomb. Newcomb offers his view, and I was
18 hopeful through interrogation to have the witness adopt the
19 letter.

20 MR. KROUSE: A letter to whom?

21 THE COURT: It says, "Dear text deleted." I don't
22 know.

23 MR. WEINGARTEN: There's privacy concerns.

24 THE COURT: You edited the document?

25 MR. WEINGARTEN: No.

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1 THE COURT: This is exactly as you pulled it from the
2 website?

3 MR. WEINGARTEN: Yes.

4 MS. KIM: Mr. Krouse, do you know if this was on the
5 OFAC website?

6 MR. KROUSE: We weren't provided the benefit of the
7 link.

8 THE COURT: That wasn't my question.

9 Do you know?

10 MR. KROUSE: I don't know. I haven't seen it so I
11 can't speak to it. Even if it was on the OFAC website, I am
12 still unclear how any of this inconsistent with Mr. Kim's
13 testimony.

14 THE COURT: What did Mr. Kim say? That you want to
15 impeach?

16 MR. WEINGARTEN: I want -- he would read it and he
17 would agree with it.

18 THE COURT: What is it inconsistent with what he said?

19 There was very loose language all yesterday afternoon
20 about the reach of OFAC and the sanctions.

21 MR. KROUSE: If there could just be a proffer of what
22 Mr. Kim said and what this letter shows that's different. The
23 government could respond.

24 THE COURT: Can you?

25 MR. WEINGARTEN: Again, there was loose language about

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1 the extent of the reach of OFAC and the sanctions, and this is
2 a specific instance where there's specific language from the
3 boss of OFAC inconsistent with that loose language.

4 THE COURT: And the inconsistency is what?

5 MR. WEINGARTEN: The ruling is that if you are in a
6 third country and you receive material, the only time you are
7 in violation of the sanctions is if there is a specific
8 intention to deliver Iran. That has obvious references to this
9 case, and it's inconsistent with the general picture that was
10 portrayed by it.

11 MR. KROUSE: Where is this in the document, your
12 Honor?

13 THE COURT: I don't know. I am just getting it for
14 the first time.

15 MR. KROUSE: Your Honor, defense counsel had all night
16 to decide and this whole trial to decide how they were going to
17 use this the document. If they were going to use it, I think
18 they're required to point to a specific part of it and tell us
19 why it is inconsistent with Mr. Kim's testimony.

20 THE COURT: You are telling me how you read this
21 letter, Mr. Weingarten. I can't say I fully understand, but it
22 is an argument that Mr. Sadr can't appropriately be sanctioned,
23 can't appropriately be violating the sanctions, right?

24 MR. WEINGARTEN: Here's --

25 THE COURT: Yes?

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1 MR. WEINGARTEN: Can I answer it with a slightly
2 different twist. The twist is this. This is an OFAC document.
3 It is part of the mix. He's an OFAC employee. This is from a
4 guy who used to run OFAC. His ruling is I believe generally
5 inconsistent with the testimony that the government offered
6 yesterday, and obviously we want this document in as a
7 representation of OFAC's position on the subjects in dispute.

8 MR. KROUSE: I mean, it's in 2003 for one thing. I
9 still don't know what specifically from this document is
10 inconsistent. I need to be pointed to that to have a
11 meaningful response on the merits.

12 But May 9, 2003, is before the U-turn was revoked.
13 It's confusing to the jury. It's outside the time frame.
14 There's been no proffer that the defendant had this in his mind
15 this letter that --

16 THE COURT: I'm sustaining on this one, 401, 403.

17 That was 35.

18 1347, what are you going to do with this? This is the
19 time frame issue again?

20 MR. WEINGARTEN: I'm sorry. I couldn't -- what's the
21 number?

22 THE COURT: 1347.

23 MR. WEINGARTEN: OK.

24 THE COURT: From 2016.

25 MR. WEINGARTEN: This is relevant in two places. One,

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1 it is obviously it is an official document issued by the United
2 States Department of Treasury and federal banking agencies.
3 It's relevant both to the enforcement piece, if you would turn
4 to page 3 and 4, and it's relevant to the correspondent bank
5 piece.

6 On the correspondent bank piece, it basically says
7 correspondent banks, correspondent banks do not have an
8 obligation to investigate the customers of their customers,
9 obviously relevant to this case.

10 And on enforcement it lays out with specificity what
11 the enforcement policies are, that well over -- well, I guess
12 the number is 95 percent of the cases OFAC gets are disposed of
13 with nothing except a letter.

14 Then they describe with particularity what happens
15 when there's very serious violations in the minority of cases.
16 So it's substantive evidence offered from government agencies
17 with responsibility -- it could not be more relevant.

18 THE COURT: But just to spit it out, what are you
19 arguing to the jury from it? What is the relevance?

20 MR. WEINGARTEN: That substantively, the customers,
21 the correspondent banks have no responsibility to investigate
22 the customers of their customers, directly relevant to this
23 case and on punishment and --

24 THE COURT: You just keep saying relevant. You have
25 to say -- why is that relevant?

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1 MR. WEINGARTEN: Because that's what Mr. Sadr was. He
2 was a customer of Hyposwiss, and what this document says is
3 that Hyposwiss had no -- that J.P. Morgan, the quote victim
4 here, had no responsibility to investigate the customer of
5 their customer Hyposwiss.

6 MR. KROUSE: I just --

7 THE COURT: Is that a risk of harm argument?

8 MR. WEINGARTEN: Yes.

9 MR. KROUSE: There will be two bank witnesses
10 testifying, your Honor. One we expect to go on today, maybe
11 both.

12 THE COURT: Overruled. Because on risk of harm it is
13 potentially relevant.

14 MR. KROUSE: Your Honor, the government agrees
15 possibly that the defense could ask the question of Mr. Kim
16 about isn't it true that OFAC resolves most cases, 95 percent
17 of cases, with administrative measures or something like that.
18 I think that is a fair point to draw out.

19 Our objection to the document, though, is, as provided
20 to us, it's a four-page document that as a lot of irrelevant
21 conduct -- or content, excuse me. I believe what
22 Mr. Weingarten is pointing to is just the bottom of page 3.
23 The question I think is fair. I think they can ask the
24 question about it.

25 THE COURT: You didn't make any other objection last

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1 night so overruled.

2 MR. KROUSE: Your Honor --

3 THE COURT: Moving on, 1349.

4 MR. KROUSE: Your Honor, I believe we did make
5 objections in the reply, but in response to -- just having the
6 documents without knowing what they're going to do with them,
7 we objected on the ground that we thought was the strongest.

8 So we did file a reply last night. This document, we
9 are saying based on Mr. Weingarten's proffer and based on what
10 they told us, just so the Court is aware, all we got was a list
11 of documents, and the documents themselves. We didn't know
12 what they were using them for other than having to guess.

13 THE COURT: You need to get to a point because I have
14 a jury waiting and I've already ruled.

15 MR. KROUSE: Yes. Your Honor, we are just asking for
16 reconsideration on the document itself.

17 THE COURT: Overruled.

18 1349, is that withdrawn?

19 It wasn't indicated.

20 MR. WEINGARTEN: This is an example of a license. He
21 talked about licenses.

22 THE COURT: 1349?

23 MR. WEINGARTEN: Yes.

24 MR. KROUSE: Your Honor, can we ask that 1347 be
25 redacted for purposes of today. We don't have an objection to

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1 admitting it.

2 THE COURT: If you want to discuss something after,
3 but I've ruled.

4 MR. KROUSE: All right.

5 THE COURT: 1349.

6 MR. WEINGARTEN: It is an example of a license. It is
7 to support humanitarian activity. Just again, being completely
8 candid, it relates to the earthquake in Iran.

9 THE COURT: What is the relevance?

10 MR. WEINGARTEN: It is a license, and he did talk
11 about licenses.

12 THE COURT: What are you going to argue to the jury
13 from it? I don't know how else to ask for relevance.

14 MR. WEINGARTEN: The only way I would argue to a jury
15 is if there's derisking evidence relating to the earthquake.

16 THE COURT: If there's derisking --

17 MR. WEINGARTEN: In my opening I made reference to it.

18 THE COURT: It doesn't get it in, because that would
19 be cart before the horse.

20 MR. WEINGARTEN: OK.

21 THE COURT: I am not hearing a stated relevance -- I
22 am not saying it can't come in, but for this witness and for --

23 MR. WEINGARTEN: But I mean -- well, never mind.

24 THE COURT: Sustained.

25 1352 and 121. The proffered relevance is --

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1 MR. WEINGARTEN: I don't know why. I don't have it.

2 THE COURT: -- risk of harm. Risk of harm to the
3 banks because they rebut the contention from Mr. Kim that
4 sanction violations are subject to strict liability, and then I
5 think what we're left with is the party admission point, is
6 that right?

7 All right. I'm overruling the objection --

8 MR. KROUSE: Can I be heard.

9 THE COURT: You may.

10 MR. KROUSE: Your Honor, this implicates a completely
11 different rule than the sanctions. This is related to SDNs.
12 This is called the 50/50 rule. It would be confusing to the
13 jury to have this other law -- it's for the same reasons -- it
14 is not relevant for the same reasons that the other laws are.
15 I realize that a jury is waiting, but with respect to this,
16 it's the same confusion concern. It's 403. It has nothing to
17 do with this case. It's not relevant.

18 THE COURT: So the argument, if you'll take on the
19 specific argument, is it accurate that Mr. Kim argued that
20 sanctions violations are subject to strict liability?

21 MR. HEBERLIG: Yes.

22 MR. KROUSE: Yes.

23 THE COURT: That pertains to risk of harm to the
24 victim banks, correct?

25 MR. KROUSE: Yes. But this has to do with blocked

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1 property. It is a different area. So it's not actually
2 addressing Mr. Kim's testimony. It's just introducing a
3 completely different rule and regulation with respect to SDNs.
4 There is no allegation that the violation in this case has
5 anything to do with SDNs. The allegation is that it violates
6 the --

7 THE COURT: Why did he testify about SDNs?

8 MR. KROUSE: Just to give the overall explanation of
9 what SDNs are. And licensing --

10 THE COURT: It's very difficult to respond to the
11 government saying X, Y, and Z have nothing to do with this case
12 after X, Y, and Z were admitted through their witness on
13 direct.

14 MR. KROUSE: That was relevant --

15 THE COURT: What matters to the government's case is
16 relevant, but not what the matters to the defense.

17 MR. KROUSE: I don't think that's fair.

18 THE COURT: You just said that SDNs are irrelevant,
19 but Mr. Kim testified on SDNs.

20 MR. KROUSE: I am saying this rule with respect to
21 SDNs, this 50/50 rule is irrelevant and confusing to the jury
22 because it has nothing do with the conduct that is alleged in
23 the case.

24 SDNs in general and the publication of what SDNs are
25 is relevant to the defendant's state of mind about the

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1 sanctions regime. On the point of 50/50 rule, though, this is
2 a completely different area and confusing to the jury.

3 THE COURT: Did he delineate with respect to risk of
4 harm to the banks between the 50/50 rule and the rules relevant
5 here? No.

6 MR. KROUSE: I don't know what's in this document that
7 is contrary to Mr. Kim's argument. So, 1352, if the defense
8 could point out what is inconsistent about this with Mr. Kim's
9 testimony.

10 THE COURT: Go ahead, Mr. Heberlig.

11 MR. HEBERLIG: What Mr. Kim testified is strict
12 liability for banks, and this goes directly to what the banks'
13 obligation are. OFAC says essentially -- I will boil it down
14 for time purposes. If the banks were innocent, didn't know of
15 any Iranian connection, then OFAC wouldn't pursue an
16 enforcement action against them. There is even less of an
17 obligation in our case because there's no allegation of SDN.

18 THE COURT: All right. It's arguably impeachment
19 witnesses. Sometimes there are arguments about -- that's why
20 we have redirect, but in light of the testimony the objection
21 is overruled.

22 Next is 1360.

23 MR. KROUSE: Your Honor, with respect to -- if the
24 Court's ruling for 1352.

25 THE COURT: 1352 and 121. Thank you.

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1 MR. KROUSE: Understood.

2 THE COURT: I think we can group 1361, 1362. This I
3 don't understand.

4 MR. WEINGARTEN: It's simple, and these are the big
5 documents with the SDNs.

6 THE COURT: Yes.

7 MR. WEINGARTEN: Those are the numbers. The
8 government offered evidence that in 2012 EN Bank, my client's
9 father's bank that he founded was put on the SDN list. We want
10 to show it was not because of specific misconduct by EN Bank,
11 it was because at that time all the financial institutions in
12 Iran were put on the SDN list, and that document reflects that.

13 What's also true is that EN was taken off the SDN list
14 in 2016. We want to show that. For the sake of completeness,
15 Trump put them back on in 2018. They introduced evidence about
16 EN Bank being put on sanctions. We want to tell the jury.

17 MR. KROUSE: It goes to the state of mind of Mr. Sadr
18 that his family companies within the Stratus Holding Group were
19 placed in the SDN list so understanding what sanctions are, but
20 the government has no objection to Mr. Weingarten asking the
21 witness are you aware that EN Bank was put on the SDN list
22 because all banks in Iran were on that date.

23 That's not an objectionable question. The government
24 is fine with that. Now what happened after the JCPOA I think
25 is out based on the Court's prior ruling. If the only point is

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1 that the defense is trying to bring out is that EN Bank was
2 designated along with all other Iranian banks the government
3 has no objection to it. Specifically what they are seeking to
4 introduce are 163-page, 302-page, 360-page documents with
5 irrelevant stuff.

6 THE COURT: Mr. Weingarten, can you get what you need
7 with the question?

8 MR. WEINGARTEN: I hope so. I think there is one more
9 point. Not just that all the other banks were placed on the
10 list, but there was no specific allegation of wrongdoing by EN
11 Bank. Maybe he needs the document, maybe he doesn't. I have
12 no desire for the jury to have 500 pages of SDNs.

13 THE COURT: You can ask the question.

14 The document is out.

15 Ask to revisit if something happens unexpected.

16 MR. WEINGARTEN: OK. Yes.

17 THE COURT: I will hear that. OK.

18 1825 is not discussed again.

19 MR. WEINGARTEN: Which one is that, your Honor.

20 THE COURT: Correspondent banking services?

21 MR. WEINGARTEN: Mr. Heberlig.

22 THE COURT: I don't think you raised it in your --

23 MR. WEINGARTEN: I don't think that was objected.

24 THE COURT: It was objected to, but you didn't
25 respond.

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1 MR. WEINGARTEN: OK. It is a banking thing.

2 Mr. Heberlig will have the banking witness.

3 THE COURT: You didn't respond, correct?

4 MR. KROUSE: There was no response on this.

5 THE COURT: All right. So I assume with the lack of
6 response last night that this was withdrawn.

7 So it's withdrawn.

8 MR. WEINGARTEN: That's fine.

9 THE COURT: 608, 609, 616.

10 MR. WEINGARTEN: Withdrawn.

11 THE COURT: OK. And that's it. All right. Get the
12 jury.

13 Just a second, Mr. Krouse, did you want to make a
14 preliminary inquiry of Mr. Kim as discussed?

15 MR. KROUSE: Yes, your Honor, please. Thank you.

16 THE COURT: All right.

17 (Continued on next page)

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Kim - Direct

1 (Jury present)

2 THE COURT: Thank you so much, members of the jury.

3 You were all here completely on time and the lawyers
4 and I tried to get through the issues that would arise now that
5 might cause us to have sidebars, and we couldn't quite get it
6 done by 9:30.

7 I appreciate your patience. I figured you would be
8 more comfortable waiting for that in the jury room than here.
9 I hate to make you wait and try to avoid that as much as
10 possible. Thank you for your patience. I think what we did
11 while you were waiting will expedite the morning, and we are
12 moving well. I said I will have some updates on timing, but
13 things are moving more quickly than had been anticipated so we
14 are in good shape. More on that later today.

15 With that, Mr. Krouse, you are going to finish your
16 direct?

17 MR. KROUSE: Ms. Kim.

18 TED KIM, resumed.

19 THE COURT: I will ask Mr. Scott to, since it is a new
20 day, readminister the both to Mr. Kim.

21 (Witness sworn)

22 DIRECT EXAMINATION

23 BY MS. KIM:

24 THE COURT: Thank you.

25 Go ahead, Ms. Kim.

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Kim - Direct

1 MS. KIM: Thank you, your Honor.

2 Q. Mr. Kim, you testified yesterday about the U.S.
3 government's comprehensive Iran sanctions program implemented
4 and enforced by OFAC --

5 A. Yes.

6 Q. -- is that right?

7 A. Yes.

8 Q. And you testified that after 2008 the U.S. government
9 imposed a comprehensive ban on the export of all financial
10 transactions to Iran, is that right?

11 A. Yes.

12 Q. Or for the benefit of entities in Iran or for the
13 government of Iran?

14 A. That's correct.

15 Q. Is it fair to say that this is the baseline sanctions
16 regime in force today? Sorry. Is it fair to say that this is
17 the baseline sanctions regime that has been in force since 1995
18 to the present day?

19 A. I don't understand your question.

20 Q. OK. So, in terms of the comprehensive ban on the export of
21 all financial services, is it fair to say that that has been
22 the baseline of the Iran sanctions program from 1995 forward?

23 A. That's correct. From 1995, from the beginning, until to
24 date exportation of financial services to Iran has been
25 prohibited.

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Kim - Cross

1 MR. WEINGARTEN: I respectfully, object, your Honor.
2 This is not what the instruction was.

3 MS. KIM: I'm getting to the question.
4 THE COURT: Next question.

5 BY MS. KIM:

6 Q. We talked about some of the foundational documents for the
7 Iran sanctions program. Have additional laws and regulations
8 been added that have targeted specific entities, industries,
9 and economic sectors in Iran?

10 A. Yes.

11 Q. And none of these additional laws and regulations have
12 altered the baseline that all?

13 MR. WEINGARTEN: Objection.
14 Q. Financial services from the U.S. to Iran --

15 THE COURT: Sustained.
16 Q. And none of these additional laws and regulations have
17 altered --

18 THE COURT: Sustained.
19 I think we've covered what was discussed, unless
20 I'm --

21 MS. KIM: That's fine, your Honor.
22 THE COURT: Cross-examination, Mr. Weingarten.

23 CROSS-EXAMINATION

24 BY MR. WEINGARTEN:

25 Q. Good morning, Mr. Kim.

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Kim - Cross

1 A. Good morning.

2 Q. My name is Reid Weingarten. I represent Mr. Sadr. We
3 actually met outside yesterday, did we not?

4 A. Yes, we did.

5 Q. OK. So just a little bit about your background.

6 A. Uh-huh.

7 Q. So did I understand you correctly to say that you have two
8 law degrees?

9 A. Yes.

10 Q. One in the States and one in South Korea?

11 A. Yes.

12 Q. You have had a variety of jobs. Were you actually inside
13 counsel for Daewoo, am I saying that correctly?

14 A. That's correct.

15 Q. That is a huge South Korean company?

16 A. Yes.

17 Q. That does many different things?

18 A. Yes.

19 Q. Including selling things to Iran, correct?

20 A. I'm --

21 MS. KIM: Objection, your Honor.

22 A. All I can say is possibly.

23 THE COURT: I'm sorry.

24 Let me just read the question.

25 Q. Probably, correct?

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Kim - Cross

1 THE COURT: Just a moment. There's an objection.

2 MR. WEINGARTEN: I'm sorry.

3 MS. KIM: Can we have a time frame on the question.

4 THE COURT: All right.

5 BY MR. WEINGARTEN:

6 Q. I am just getting a general understanding of the sanctions
7 here. It is true, is it not, that South Korean companies do a
8 tremendous amount of business with Iran, correct?

9 MS. KIM: Objection, your Honor. Relevance.

10 THE COURT: Sustained.

11 Q. So you were general counsel, Daewoo, correct? Inside
12 counsel?

13 A. Yeah.

14 THE COURT: What's the time frame? When were you --

15 THE WITNESS: From 1994 through 19 -- through 2001.

16 THE COURT: OK.

17 BY MR. WEINGARTEN:

18 Q. Then you were in private practice in the States?

19 A. Yes.

20 Q. And you have been at OFAC for how long?

21 A. Six years.

22 Q. Is there an OFAC section devoted entirely to Iran?

23 A. In my division, no.

24 Q. OK. Are there employees of OFAC who work exclusively on
25 Iran?

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Kim - Cross

1 A. There are, yeah. Yes.

2 Q. OK. Are you one of them?

3 A. Yes and no. Can I explain?

4 Q. Sure, of course.

5 A. Because most of our -- my division is enforcement division
6 so all the --

7 Q. I missed that. I'm sorry.

8 A. My division is called enforcement division.

9 Q. OK.

10 A. In my division, most of the work is related to Iran
11 sanctions. But in my division, everybody is a generalist.

12 Q. OK.

13 A. But actually most of our work is related to Iran.

14 Q. OK. So what you're --

15 A. So we had to constantly work with those persons in other
16 divisions whose mostly specialized in the Iran program, so we
17 worked together. So it is really difficult to say somebody is
18 only devoted to the Iran program. We are not officially Iran
19 expert enforcement officer --

20 Q. OK?

21 A. -- but most of our work is Iran.

22 Q. OK. In this case, was there an allegation that came to
23 OFAC's attention relating to Mr. Sadr or this particular case?

24 A. Could you --

25 Q. In your work as enforcement --

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Kim - Cross

1 A. Uh-huh.

2 Q. -- relating to Iran --

3 A. Uh-huh.

4 Q. -- did it come to your attention that there was an
5 allegation made relating to anything having to do with this
6 case?

7 A. Not until I got instruction to get involved in this.

8 Q. So, to your knowledge, this matter was never investigated
9 by OFAC, correct?

10 MS. KIM: Objection, your Honor.

11 THE COURT: Overruled.

12 A. In my knowledge, no.

13 Q. OK. To your knowledge, was there ever a referral made by
14 J.P. Morgan to OFAC relating to this case?

15 A. In my knowledge, no.

16 Q. OK. How long have you been involved in this case?

17 A. Since --

18 MS. KIM: Objection, your Honor.

19 What does "involved in this case" mean?

20 MR. WEINGARTEN: Working with the prosecutors.

21 MS. KIM: Objection, your Honor, "working with the
22 prosecutors."

23 THE COURT: Overruled.

24 A. Yes. I started to work with the prosecutors from end of
25 February, like 12 months.

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Kim - Cross

1 Q. How many meetings have you had with them?

2 A. Meetings, six or seven meetings.

3 Q. OK. During that period of time, it never came to your
4 attention that OFAC had received a referral from J.P. Morgan
5 that has to do with this case, is that fair?

6 A. I cannot say that.

7 Q. Well, is it true or is it not true?

8 A. I don't know.

9 Q. So you have no knowledge that that occurred, right? No one
10 has brought that to your attention?

11 A. Not my attention.

12 Q. Well, to OFAC's attention.

13 A. That I don't know.

14 Q. So the answer is no?

15 A. That I don't know.

16 Q. So just to start with the general contours of the
17 sanctions, you have testified that what is in play is the
18 relationship between the United States and Iran, correct?

19 A. Yes.

20 Q. And the reason I asked you about Daewoo, I want to make it
21 clear that other countries, like South Korea can trade with
22 Iran back and forth and that happens, isn't that true?

23 MS. KIM: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. Well, isn't it true, for example, that the sanctions don't

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Kim - Cross

1 include Iranians who live in Canada and do business with the
2 United States?

3 A. That is not true.

4 Q. The Iranians in Canada can't do business with the United
5 States?

6 A. It depends.

7 Q. Well, isn't it true that an Iranian businessman who works
8 outside of Iran and does business with the rest of the world
9 and none of the proceeds make it to Iran, is exempted from
10 these sanctions?

11 A. I'm sorry. It's difficult to understand your question.

12 Q. Well --

13 A. It's too long. I need to draw a picture to understand.

14 THE WITNESS: Can I do that?

15 THE COURT: Sure.

16 A. Could you -- because I usually to understand the scenario.
17 I this is my habit.

18 Q. Fair enough.

19 MR. WEINGARTEN: With the Court's permission, I will
20 withdraw that question and get to it after I do a few other
21 things.

22 THE COURT: That's fine.

23 BY MR. WEINGARTEN:

24 Q. Now, yesterday, you testified that basically these
25 sanctions are a foreign policy tool for the president. Did I

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Kim - Cross

1 get that correctly?

2 A. Yes.

3 Q. So, in other words, if the president of the United States
4 wants a particular country to conform to certain foreign policy
5 objectives, he can impose sanctions?

6 A. Yes.

7 Q. And that happens, correct?

8 A. Yes.

9 Q. And the sanctions sometimes change?

10 A. Yes.

11 Q. For the same country?

12 A. Yes.

13 Q. Sometimes they're harsh and then the country changes its
14 attitude and they become gentle, fair?

15 A. Yes.

16 Q. And sometimes they are withdrawn?

17 A. Yes.

18 Q. And isn't it true that the sanctions against Iran have been
19 in place in a variety of forms from Jimmy Carter forward?

20 A. No.

21 Q. Haven't there been sanctions against Iran for 40 years.

22 A. No. Shall I explain?

23 Q. Sure.

24 A. There was for a brief period, from 1979 to 1981, and that
25 program was related to another incident, and then it was almost

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Kim - Cross

1 resolved. The current Iran program is completely separate from
2 the old one. So the current one, when we talk about Iran
3 program, we need to think about the program starting from 1995.

4 Q. I am not talking about the current program. I'm talking
5 about United States sanction against Iran. Haven't they been
6 in place in a variety of forums for 40 years?

7 A. I don't know. That is not my --

8 Q. OK. Fair enough. Isn't it true that the sanctions against
9 Iran have changed dramatically depending upon who the president
10 is?

11 A. I wouldn't say so.

12 Q. You would or would not?

13 A. Wouldn't.

14 Q. OK. Isn't it true that under President Reagan there were
15 sanctions against -- there was a ban on imports, true?

16 A. Yes.

17 Q. Isn't it true that Bill Clinton changed those to exports or
18 included imports with exports and made an entire trade embargo?

19 A. That's true.

20 Q. Isn't it also true that President Obama changed the focus
21 of the sanctions from these gross weapons against Iran to
22 specific --

23 MS. KIM: Objection, your Honor.

24 Q. -- targeted objectives --

25 THE COURT: Just a moment.

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Kim - Cross

1 Overruled.

2 Q. Isn't it true that President Obama's focus was on getting
3 the bad guys, getting the government of Iran, the national
4 banks of Iran, the Islamic Revolutionary Guard Corps and the
5 SDNs, isn't it true that that is what he focused on?

6 MS. KIM: Objection.

7 THE COURT: Overruled.

8 A. No.

9 Q. You disagree with that?

10 A. I disagree --

11 Q. OK.

12 A. -- with what --

13 Q. I'm sorry.

14 A. I disagree to what you described.

15 Q. OK. That's fine. Isn't it true that the sanctions law,
16 that sometimes the same language can be used for different
17 countries for different sanctions programs using the same
18 words, and the words can have different meanings depending on
19 the context of the sanctions?

20 MS. KIM: Objection, your Honor. Form.

21 THE COURT: Yes. I will ask you to rephrase, please.

22 MR. WEINGARTEN: OK.

23 BY MR. WEINGARTEN:

24 Q. Isn't it true that there are sanctions programs I think you
25 said yesterday against 30 countries?

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Kim - Cross

1 A. Uh-huh.

2 Q. Isn't it true you can find the same language in the
3 different sanctions programs?

4 A. Uh-huh.

5 Q. And isn't it true that OFAC has said to the world that
6 using the same words --

7 MS. KIM: Objection, your Honor.

8 Q. -- can mean different things depending on the context and
9 the particular sanctions agenda?

10 THE COURT: One word, grounds?

11 MS. KIM: Relevance.

12 MR. WEINGARTEN: Confusion.

13 MS. KIM: It goes to the law.

14 THE COURT: Overruled.

15 Q. Isn't that true, sir?

16 A. Not exactly. It's true it can be interpreted differently,
17 but not in a substantial way, yeah.

18 Q. Can't the same words mean different things depending upon
19 the context?

20 MS. KIM: Asked and answered, your Honor.

21 THE COURT: Sustained.

22 Q. I would like to refresh the --

23 THE COURT: No time for that.

24 MR. WEINGARTEN: OK. I'm sorry.

25 THE COURT: I thought you were explaining your -- go

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Kim - Cross

1 ahead.

2 Next question.

3 MR. WEINGARTEN: I would like to put up Government
4 Exhibit 623 just for the witness.

5 THE COURT: I misunderstood. Thank you, you may.

6 MS. KIM: Objection, your Honor.

7 He hasn't said that he doesn't remember something.

8 Q. Do you know, sir, whether or not there is a reg in OFAC --

9 MS. KIM: Objection, your Honor.

10 THE COURT: Move on. We'll come back to it.

11 MR. WEINGARTEN: OK.

12 BY MR. WEINGARTEN:

13 Q. So I believe you testified yesterday and perhaps this
14 morning as well that there are a number of statutes, executive
15 orders and regs applying to the Iranian sanctions, correct?

16 A. That's correct.

17 Q. OK. Just so we're clear laws passed by Congress, correct?

18 A. Uh-huh.

19 Q. Would that be what you are talking about?

20 A. Including the laws passed by Congress.

21 Q. And the executive order would be when the president of
22 United States declares an emergency and says why, correct?

23 A. I'm sorry. Could you --

24 Q. The executive order would be the president's declaration
25 that there is an emergency and he explains why, correct?

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Kim - Cross

1 A. Yes.

2 Q. Then OFAC will issue regulations, correct?

3 A. Yes.

4 Q. And often the regulations are abundant, are very
5 complicated and very long, fair?

6 A. No.

7 Q. They're not?

8 A. Not to me.

9 Q. So they're brief?

10 A. They're not unusual.

11 Q. And they're simple to understand? Anybody who reads them
12 would understand them in two seconds? Is that what you are
13 saying?

14 MS. KIM: Objection, your Honor. Mischaracterizes.

15 THE COURT: Overruled.

16 A. Anybody who is involved in international business would
17 understand.

18 Q. Isn't it true that there is a whole -- you are a lawyer,
19 right?

20 A. Yeah.

21 Q. Isn't there a whole branch of the bar of lawyers who do
22 nothing but interpret your regs at OFAC?

23 A. Yes.

24 Q. So they're so simple that there just emerged in the world a
25 discipline of lawyers because it was easy to understand, is

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Kim - Cross

1 that your testimony?

2 A. Yes. What I'm saying is it's not unusual. It is not
3 unusually difficult to understand what the sanctions rules are
4 demanding.

5 Q. OK. Isn't it true that the regs change all the time or
6 frequently?

7 A. No.

8 Q. No. OK. Let's talk about Persian rugs. Everybody knows
9 what a Persian rug is, right?

10 A. Yes.

11 Q. Isn't it true that Persian rugs were legal in terms of
12 coming into the United States until 2010, isn't that true?

13 A. The carpet case is not really a serious thing to me. So I
14 know it was allowed, prohibited, allowed, prohibited. It
15 changed a couple of times.

16 Q. So let's be clear. So it was legal until 2010; then it
17 became illegal?

18 MS. KIM: Objection, your Honor. Relevance.

19 THE COURT: Overruled.

20 Q. Isn't it true that in 2016 it became legal again and then
21 in 2018 it became illegal? So isn't it true in eight years it
22 changed four times?

23 THE COURT: You'll calm down and break out the
24 question.

25 MR. WEINGARTEN: OK.

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Kim - Cross

1 BY MR. WEINGARTEN:

2 Q. So let's do it one step at a time.

3 A. Yes.

4 Q. Up until 2010, if I'm sitting here in New York City and I
5 want to buy a Persian rug from Tehran, I can do that, right?

6 A. I'm sorry. I don't follow the carpet rules because I've
7 never -- I did a couple of cases involving carpets, but it's
8 not -- I don't exactly remember the dates and years, but always
9 I have to go to the regs, if it was not, if it was yes, but it
10 is not, not like important -- very important matter for overall
11 sanctions enforcement.

12 Q. So you will agree with me that it changed four times in
13 eight years, correct?

14 A. I'm sorry. I don't know whether it's four times, but it
15 changed.

16 Q. OK. What about the subject of foreign subs of U.S.
17 corporations?

18 A. Uh-huh.

19 Q. Isn't it true that that also changed four times in terms of
20 whether or not they were subject to the sanctions?

21 A. Let me count.

22 THE COURT: You are asking about foreign --

23 THE WITNESS: Yeah.

24 THE COURT: Just a moment. You are asking about
25 foreign subsidiaries of U.S. companies; is that the question?

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Kim - Cross

1 MR. WEINGARTEN: Yes.

2 THE COURT: Go ahead.

3 A. It was outside of the definition and then put it back, put
4 it in, and then it went out and put it in. So isn't it two
5 times? But --

6 Q. Isn't it true that from '97 until '12 they were outside the
7 program; from '12 to '15, they were inside the program; and
8 then from '18 on -- so just three times, I misspoke, not four,
9 but three.

10 A. So it was -- I wouldn't describe it as inside the program,
11 outside the program. I would say U.S. corporations, foreign
12 subsidiaries was not defined as part of U.S. person.

13 Q. OK.

14 A. But even if -- it's not -- you know, something could be in
15 the program while they were outside of the U.S. person's
16 definition.

17 Q. I think we are saying the same thing. That's fine. I will
18 move on. These changes take place at the political whim of the
19 president, isn't that true?

20 MS. KIM: Objection, your Honor.

21 Lack of foundation.

22 THE COURT: Sustained.

23 Q. These programs change because the president says they are
24 changing or the executive branch?

25 MS. KIM: Objection.

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Kim - Cross

1 A. Yes.

2 MS. KIM: Can he explain what he means by "program,"
3 "regulations."

4 MR. WEINGARTEN: Let's take a simple one, the Persian
5 carpets. The Persian carpets changed four times because the
6 executive branch wanted them to change four times, correct?

7 A. Yes.

8 Q. Was there any say in Congress about any of those changes?

9 A. I don't know.

10 Q. Was there any notice given to anybody, or was it just the
11 executive branch said, boom, and it happened?

12 A. Notice of? Notice of what?

13 Q. I'll ask it this way. Does OFAC have to give notice to
14 anybody when they make these changes, or do they just do it?

15 A. Oh, are you asking how OFAC's involved in the
16 decision-making process?

17 Q. Yes.

18 A. Yes. We are involved --

19 MS. KIM: Your Honor, can the defense specify if he's
20 talking about Persian carpets or about the sanctions program.

21 THE COURT: Sustained.

22 BY MR. WEINGARTEN:

23 Q. Let me ask this: Isn't it true that OFAC can change an
24 interpretation of a rule without giving any notice to the
25 public?

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Kim - Cross

1 A. We do.

2 Q. I'm sorry?

3 A. OFAC gives out notice to the public when we change the
4 interpretation.

5 Q. But you don't have to?

6 A. I don't know, but what I know is we do.

7 MR. WEINGARTEN: 1339, just for the witness to take a
8 look.

9 MS. KIM: Objection, your Honor.

10 THE COURT: Sustained.

11 BY MR. WEINGARTEN:

12 Q. Isn't it true, sir, that OFAC can change its previously
13 stated nonpublished interpretation or opinion without first
14 giving public notice, isn't that true, sir?

15 MS. KIM: Objection. Asked and answered.

16 THE COURT: Overruled.

17 A. I'm sorry. I didn't get the question correctly. So --

18 Q. All right. I'm just ask it again, and if you get it,
19 great; if you don't, I'm fine with that, too.

20 A. Yes.

21 Q. Isn't it true that OFAC can change its previously stated
22 nonpublished interpretation or opinion without first giving
23 public notice?

24 A. Yes.

25 Q. So the decision to give public notice is up to OFAC?

K35nsad2

Kim - Cross

1 A. I'm sorry. If you ask like that, then I don't get it. Can
2 you repeat that last question?

3 Q. That's fine. I'll move on. We have a lot to cover.

4 You gave some indication yesterday about the process,
5 about how a regulation gets established. Just a sum, I think,
6 of your testimony, there is a statute in place, there is a law
7 in place that says if the president of the United States sees
8 an emergency, he can declare it, and then he can impose
9 sanctions, correct?

10 A. That's correct.

11 Q. OK. And regs can follow from that executive order from
12 OFAC imposing what is sanctioned and what is not sanctioned,
13 fair?

14 A. Yes, that's fair.

15 Q. Then OFAC will also issue guidance to the world as to what
16 these sanctions may or may not mean, correct?

17 A. That's correct.

18 Q. Then OFAC also issues something called frequently asked
19 questions so that people who have questions can write in and
20 then you put them on your website so the whole world can see
21 what's going on, correct?

22 A. That's correct.

23 Q. That's what the lawyers who work in this area work with,
24 all those documents that we just talked about, correct?

25 A. Probably.

K35nsad2

Kim - Cross

1 MS. KIM: Objection, your Honor.

2 MR. WEINGARTEN: All right.

3 THE COURT: Just a minute.

4 You withdraw the question?

5 MR. WEINGARTEN: Yes. I withdraw the question.

6 THE COURT: The question is withdrawn.

7 BY MR. WEINGARTEN:

8 Q. So when it comes to the OFAC regs that you all put out,
9 they have nothing to do with Congress, right? In fact --

10 MS. KIM: Objection.

11 Q. -- Congress doesn't pass on them; there are no hearings
12 about them?

13 THE COURT: Just a second.

14 MS. KIM: Objection to form.

15 Compound question.

16 THE COURT: Let's break them apart.

17 MR. WEINGARTEN: OK.

18 BY MR. WEINGARTEN:

19 Q. When OFAC decides what regs to pass, they're not subject to
20 Congressional hearings; OFAC issues those regulations, correct?

21 A. That's correct.

22 Q. And there's no vote on the Hill whether or not those
23 regulations are appropriate or not appropriate, correct?

24 A. Correct.

25 Q. So if the President of the United States wakes up today and

K35nsad2

Kim - Cross

1 says, you know, I'm angry at Turkey --

2 MS. KIM: Objection, your Honor.

3 MR. WEINGARTEN: I am following with the hypothetical.

4 THE COURT: Sustained.

5 BY MR. WEINGARTEN:

6 Q. Just so we're sort of grounded in the enforcement work that
7 you do, OK, it is true, is it not, that U.S. dollars are not
8 prohibited from going into Iran?

9 A. It depends. But U.S. dollars can go into Iran without --

10 Q. OK.

11 A. Yes.

12 Q. It is also true to your knowledge that virtually every
13 international bank in the world has U.S. dollars?

14 A. Yes.

15 Q. And OFAC does not regulate those U.S. dollars that are in
16 foreign banks, isn't that correct?

17 A. It depends. As long as that money is not involved in
18 prohibited transaction, it's fine.

19 Q. OK. And for example, in Hong Kong --

20 A. Uh-huh.

21 Q. -- there are many banks in Hong Kong that clear dollar
22 transactions, aren't there?

23 A. What do you mean? The Hong Kong banks clearing as U.S.
24 banks clearing --

25 Q. Yes.

K35nsad2

Kim - Cross

1 A. -- dollars?

2 Q. Yes.

3 A. They clear, yes.

4 Q. Yes. I mean, there are clearing banks in Hong Kong over
5 which you have no responsibility, isn't that true?

6 A. Yes. It's true.

7 Q. OK. And an American Iranian can walk down the street and
8 open an account in Wells Fargo and that doesn't violate the
9 sanctions, isn't that true?

10 A. Excuse me. Could you repeat?

11 Q. An Iranian American can open an account in Wells Fargo here
12 in New York, and that implicates no sanction, isn't that true?

13 A. That's true.

14 Q. Isn't it also true that Iranians who are working outside of
15 Iran --

16 A. Uh-huh.

17 Q. -- doing business with Germany or Greece involving no U.S.
18 financial institution are not violating any sanction either?

19 A. That's not our business.

20 Q. That's not your position? That's not your business?

21 A. No. What I'm saying is they can do the business you
22 described without getting subject to U.S. sanctions.

23 Q. OK. So let's say an Iranian was in Switzerland and he was
24 building houses in Venezuela and no money went back to Iran.
25 That wouldn't be your business, would it?

K35nsad2

Kim - Cross

1 MS. KIM: Objection.

2 THE COURT: Sustained.

3 MR. WEINGARTEN: With the Court's indulgence. Sorry.

4 BY MR. WEINGARTEN:

5 Q. Let's look at the PowerPoint that you talked about
6 yesterday?

7 A. Yes.

8 MR. WEINGARTEN: Let's turn to GX 601, page 2. No,
9 let's go back to page 1, if we may.

10 Q. So this is the front page. "OFAC administers and enforces
11 economic and trade sanctions based on U.S. foreign policy and
12 national security goals."

13 That's what you've testified before, correct? And
14 that's true?

15 A. Yes.

16 Q. The whole point is to impose foreign policy restrictions on
17 countries that the president wants to punish, fair?

18 MS. KIM: Objection, your Honor.

19 THE COURT: Just a moment. Overruled.

20 A. Yes.

21 Q. OK. No. 2, so we are in agreement that there are many,
22 many more statutes and orders and regs --

23 A. Uh-huh.

24 Q. -- involving Iran than are represented on GX 2, correct?

25 A. That's correct.

K35nsad2

Kim - Cross

1 Q. OK. Let's turn to 3.

2 OK. And now let's turn to 4.

3 So you say, "Prohibits virtually all imports and
4 exports to and from Iran."

5 Again, we are not talking about South Korea; we are
6 talking about the United States, correct?

7 A. Can you repeat the question.

8 Q. It prohibits virtually all imports and exports to and from
9 Iran to the United States. We are not talking about Turkey, we
10 are not talking about Switzerland, we are not talking about
11 Venezuela, we are talking about the United States. Correct?

12 A. Not correct.

13 Q. So are you saying that Iran can't import or export anything
14 to anybody?

15 A. It depends, because the imports and exports here includes
16 direct or indirect and indirect exportation importation to. So
17 if the goods go to Turkey and eventually come to the United
18 States, as long as Iran's --

19 Q. OK. Let's go the other way. Let's see --

20 MS. KIM: Your Honor, can he finish answering the
21 question.

22 THE COURT: You may. You were cut off.

23 Go ahead. Finish your answer.

24 A. OK. Importation exportation, if the exportation from U.S.
25 goes to Taiwan, but it was intended to Iran eventually, then

K35nsad2

Kim - Cross

1 the U.S. exportation to Taiwan matters.

2 Q. I'm glad you said that. So thank you. What you are saying
3 is that if there is a middleman and the middleman's only
4 purpose is to get the end product to Iran, then the sanctions
5 would apply, correct?

6 A. I lost your description of the middleman.

7 Q. Let's say hypothetically that someone in the United States
8 or someone -- an American person --

9 A. Uh-huh.

10 Q. -- wanted to get something to Iran, and didn't send it
11 directly, but had a middleman in Switzerland, and used that
12 middleman to get the product to Iran, correct? That would
13 implicate the sanctions?

14 A. That's correct.

15 Q. But if nothing went to Iran, then it wouldn't implicate the
16 sanctions?

17 A. It does. I'm sorry, but it does.

18 Q. OK. So if there is a middleman who receives something and
19 then doesn't send it to Iran and never intended to send it to
20 Iran, that's your business?

21 A. Yes.

22 Q. OK.

23 A. If it eventually landed in Iran, because that's what I said
24 yesterday, because our rules operate under strict liability.
25 It doesn't matter actually what you intended or not.

K35nsad2

Kim - Cross

1 Q. Well --

2 A. What we are prohibiting is not that the person, we are
3 prohibiting the transactions. So exportation to Iran is
4 prohibited. So how those parties are involved in this
5 particular transaction is next question.

6 Q. All right.

7 A. They are all involved in the violation of sanctions.

8 Q. You are assuming everybody is involved with everything and
9 everybody is guilty? Is that what you are saying?

10 MS. KIM: Objection, your Honor.

11 THE COURT: Sustained.

12 The jury will regard.

13 MR. WEINGARTEN: Let's clarify this point.

14 THE COURT: Excuse me.

15 The jury will disregard the answer and the question.

16 BY MR. WEINGARTEN:

17 Q. So I just want to be -- directly and indirectly a point I
18 want to clear. OK?

19 A. Uh-huh.

20 Q. So it's your testimony that if someone in the United States
21 wants to send something to Iran --

22 A. Uh-huh.

23 Q. -- and uses a middle person in Germany --

24 A. Uh-huh.

25 Q. -- that involves the sanctions?

K35nsad2

Kim - Cross

1 A. Yes.

2 Q. OK. The critical issue is whether or not the intent is for
3 the product to get to Iran, correct?

4 A. In this -- but the -- that one matters when -- it is not
5 that simple. I'm sorry. If the product goes to Iran, it
6 matters, but if not, if it didn't land in Iran, then -- I'm
7 sorry. The intention is really -- it doesn't really work here.

8 Q. I missed that. I'm sorry. The intention is important?

9 A. It's important when we consider the nature of the violation
10 but the violation is not related to the intention.

11 Q. Well, does the violation turn on whether or not the product
12 gets to Iran?

13 A. That's what I'm confused actually. So there can be many
14 different scenarios to answer your question.

15 Q. OK. Let's move on. So back to "prohibits virtually all
16 imports and exports to and from Iran."

17 It is true, is it not, that OFAC has established
18 humanitarian exceptions for product going to Iran?

19 A. That's correct.

20 Q. And it includes food?

21 A. Yeah.

22 Q. All right. So the United States and U.S. people can export
23 food to Iran, correct?

24 A. That's correct.

25 Q. OK. And medicine?

K35nsad2

Kim - Cross

1 A. Yes.

2 Q. There can be the transfer of family remittances?

3 A. That's correct.

4 Q. And that means that if there's family on either side, in
5 Iran or in the United States, money can go back and forth to
6 support those family members; that's completely legal.

7 Correct?

8 A. That's correct.

9 (Continued on next page)

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K35TSAD3

Kim - Cross

1 BY MR. WEINGARTEN:

2 Q. And in instances there have been exceptions made for
3 disaster relief, correct?

4 MS. KIM: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. Let's take a look at number 5. So you testified yesterday
7 that the comprehensive trade embargo against Iran prohibits
8 export of goods and services directly or indirectly to Iran or
9 to the government of Iran, correct?

10 A. Correct.

11 Q. So that's the general prohibition, right?

12 A. The general prohibition includes more than that, but it is
13 fair to say it's the basic in terms of commerce, import and
14 export.

15 Q. So it seems from that statement that you -- let's break it
16 apart a little bit: Prohibits goods or services directly or
17 indirectly to two places, to Iran or the government of Iran, is
18 that what that sentence says?

19 A. Yes.

20 Q. And "to Iran" means that territory of Iran, doesn't it?

21 A. Yes.

22 Q. And the government of Iran is the mullahs and the
23 Ayatollahs and government that runs the country, correct?

24 A. Yes.

25 Q. And let's talk about goods and services. Yesterday you

K35TSAD3

Kim - Cross

1 said that services could mean engineers going into Iran and
2 helping projects. You said that yesterday.

3 A. Can you repeat?

4 Q. Well, I'm trying to recall in a simplistic way what you
5 said. You gave two examples yesterday, you talked about
6 engineers going into Iran and working. Do you remember that?

7 MS. KIM: Objection, I think that mischaracterizes the
8 testimony.

9 THE COURT: Sustained.

10 Q. You gave two examples. Tell me what you said yesterday.

11 A. The engineering services.

12 Q. Okay. And the second was financial services, right?

13 A. Yeah.

14 Q. Okay. Is the word "services" defined anywhere in any OFAC
15 law, reg, guidance, anything? Is there a place we can go to
16 see what "services" mean?

17 Isn't the answer no?

18 A. Yes, but I don't know. There is the services defined in
19 the reg, but I don't know whether that description serves as
20 the meaning of service you're looking for.

21 Q. Isn't it true, sir, that what you're looking at here is a
22 reg from 1995?

23 A. Mm-hmm.

24 Q. And in all the documents in your building, the first time
25 services are applied to financial transactions is in 2012.

K35TSAD3

Kim - Cross

1 MS. KIM: Objection.

2 Q. Isn't that true?

3 A. No.

4 MS. KIM: The Court will explain the law to the jury.

5 THE COURT: It's your exhibit, isn't it, Ms. Kim?

6 MS. KIM: The meaning of services and the definition
7 of services.

8 THE COURT: Yes, I will, I certainly will, but this
9 is -- well, actually what we're going to do, because I hoped
10 we resolved all the issues, but I will give the jury a little
11 bit of a break. We'll break now so we can discuss this.

12 Members of the jury, thanks for your patience, I will
13 see you in 15 minutes.

14 (Jury not present)

15 MS. KIM: Your Honor, could the parties have a
16 two-minute bathroom break?

17 THE COURT: We'll take a couple minutes and come back
18 to discuss this issue. But first of all, let me say both sides
19 of been guilty of this: If I haven't been clear going forward,
20 when there are objections, say the word "objection." If I want
21 a ground, I'll ask for it. Nothing more, no more commentary
22 feeding witnesses, getting suggestions in front of the jury.
23 So for example, don't say in the courtroom I'll instruct you as
24 to law.

25 Obviously this is an issue we'll have to deal with. A

K35TSAD3

Kim - Cross

1 limiting instruction might be appropriate, you should think
2 about a proposal for that, but the government introduced the
3 law yesterday. So whatever we discussed previously, I think so
4 far, in light of what the government did, we're on appropriate
5 territory, but it can't be a contradiction as to what I have
6 instructed -- to what I will instruct the jury on as to the law
7 and the legal conclusions I reached without ties to Mr. Sadr's
8 knowledge, and that's a fine line, made more complicated by
9 what the government did yesterday, but we'll take that up in a
10 couple of minutes.

11 (Recess taken)

12 THE COURT: Counsel, I need to raise an issue, which
13 is I have been informed by the District Executive that one of
14 the potential jurors that was here for jury selection on Monday
15 has been contacted by the CDC; not diagnosed with the virus,
16 but is being quarantined because of the exposure -- I want to
17 say, based on what I know, I will get more information from the
18 DE in a moment, this is not anything to be panicked about, not
19 anything to be overly concerned about, but the District
20 Executive's view is we need to take some precautionary measures
21 and hard clean the courtroom.

22 So what I have been told is that this is someone who
23 was at the synagogue where someone has been diagnosed on the
24 same days, and my understanding of state health warnings and
25 the like is this sort of second, third-level exposure, which is

K35TSAD3

Kim - Cross

1 what the possibility is here, is not leading to quarantine at
2 this point, so even family and the like of folks who are
3 quarantined don't need to be quarantined. That's the kind of
4 distance we're at. But the best advice, as we have seen, for
5 example, at New York Law School, is to clean spaces where there
6 has been this level of exposure, or potential exposure I think
7 is the best way to think of it. I will get more information
8 from the DE, but his suggestion is that he wants to come in and
9 do the deep clean now.

10 So I think what makes sense is to send the jury home
11 for the day and take it from there and indicate simply that
12 there is an issue that needs to be resolved, further
13 information, and therefore we can't proceed today, period.
14 Send them home.

15 MR. KROUSE: So obviously the District Executive's
16 concern is a legitimate one that we also share and steps that
17 we think should be taken.

18 The only caveat is Mr. Kim has been here for several
19 days. I don't know how much longer Mr. Weingarten's cross is,
20 but if we could -- the redirect will be extremely short, if
21 any --

22 THE COURT: I suspect we have some distance to travel.
23 Mr. Weingarten, is that correct?

24 MR. WEINGARTEN: It is.

25 MR. KROUSE: Perhaps we could move to a different

K35TSAD3

Kim - Cross

1 courtroom for Mr. Kim's cross-examination, which I still don't
2 think will take us past lunch.

3 THE COURT: 110 is available, although I'm not sure
4 that it's immediately available. I think if it were the lunch
5 break, it would be one thing. I don't think we could proceed
6 right now, so we would need a break of substantial time to get
7 the courtroom and get the courtroom set up.

8 So the only possibility is to tell the jury we have
9 issues to resolve, we're doing an early lunch, but then tell
10 them we're moving to another courtroom. But to move to another
11 courtroom, I think that we need to deal with essentially
12 protocols with respect to all of the equipment that's been in
13 the room and the like, and I just don't know if it's practical
14 on the fly right now to do that.

15 MR. KROUSE: Your Honor, so I think to make the best
16 use of the jury's time, they have been here this morning and
17 they only heard about 50 minutes of testimony. It would be, I
18 think, efficient to, instead of spreading this witness over
19 three days to finish today, I understand the logistical
20 challenges, but I think the suggestion that we break them early
21 for lunch, tell them they can go eat or get coffee or whatever
22 for an hour and a half or so to see if we can logistically
23 accomplish the move to 110, and if we can, have the jury come
24 there at 11:30 or so or 12:30, and if not, have them come back
25 at 12:30 and say they will be done for the day. I think it's

K35TSAD3

Kim - Cross

1 worth a try to see if we could move to a different courtroom.

2 THE COURT: Mr. Weingarten?

3 MR. WEINGARTEN: I don't know if -- it's astonishing
4 news. Thinking about 516 and this is a little challenging.

5 THE COURT: It's not an issue that any of us have had
6 to deal with before, and I want to emphasize at this point
7 we're talking entirely precautionary measures. It's just
8 in-the-moment dealing.

9 MR. WEINGARTEN: I understand. Mr. Kim seems like a
10 lovely guy, but he's a public servant, I was a public servant,
11 sometimes we have to stay an extra night. I think we have to
12 move here.

13 MS. KIM: Your Honor, I also note it seems like
14 Mr. Weingarten is planning go about another hour or so. He
15 indicated he might finish before lunch, so it's possible that
16 Mr. Kim would be finished after an hour and five minutes.

17 THE COURT: My judgment -- I'll tell you what, let's
18 break, let me see what I can learn very briefly from the DE
19 about 110. It will mean telling the jury that we're moving
20 courtrooms.

21 MR. WEINGARTEN: That has the potential for arousing
22 all sorts of speculation about this very subject. I say we be
23 straight with them and fix the problem.

24 MR. KROUSE: It's a bigger courtroom. I don't think
25 the jury is going to speculate. They see us crammed in here,

K35TSAD3

Kim - Cross

1 maybe they think we're moving because it's a bigger courtroom.
2 And it would only be a temporary moving for the rest of today,
3 however long we end up sitting.

4 THE COURT: Give me a moment to speak with the DE.

5 (Recess taken)

6 THE COURT: We have access to 110 pretty much
7 immediately. What I think is the right course is to tell the
8 jury that we need to break early for lunch, we are going to
9 move to the larger courtroom, 110, maybe have Mr. Scott show
10 them on their way out where they will come in, and then resume
11 let's say at 12:30, and I think we should be able to continue
12 at that point.

13 The DE emphasized how super-precautionary this is, the
14 cleaning of the courtroom, but it is what he's recommending.

15 So 110 is available now. I think that makes sense.
16 Until we have any additional information, there's no need to do
17 anything differently.

18 MR. WEINGARTEN: So we just take everything?

19 THE COURT: So I've got DE folks coming immediately,
20 they will assist with the transfer of the technology to the
21 other courtroom. It's only physical contact, so the jurors
22 didn't have access to the technology that we'll be moving, so
23 yes, we'll move everything.

24 MR. WEINGARTEN: With the likelihood we are coming
25 back or staying there? Who knows?

K35TSAD3

Kim - Cross

1 THE COURT: I presume we'll stay there since we should
2 be in a bigger courtroom anyway.

3 So just to be clear, what I will tell the jurors is we
4 need to take an early lunch break, unfortunately, and I'm sorry
5 for the start and stop nature. We are going to resume at
6 12:30. We will be moving to a different and larger courtroom,
7 Courtroom 110, Mr. Scott will show them how to get there, and
8 that they should move their notebooks and the like. Mr. Scott
9 will take them down there as well.

10 No need to panic, a lot of places are dealing with
11 this kind of stuff, and it's a matter of needing to clean the
12 courtroom, so that's what we'll do.

13 We'll bring in the jury.

14 Counsel, any objection to me telling the jury that we
15 believe the case will likely get to closing arguments next
16 week?

17 MR. KROUSE: No objection. Next week I think --

18 THE COURT: Not making any promises beyond that, but
19 we think we -- our best estimate at this point is we get to
20 closing arguments next week.

21 MR. KROUSE: With the caveat we don't know how long
22 the defense case will be, but that is our expectation. The
23 government's case will certainly be completed.

24 THE COURT: I know, Mr. Krouse, the question is what
25 we can tell the jury with all of the issues that surround that.

K35TSAD3

Kim - Cross

1 Mr. Weingarten?

2 MR. WEINGARTEN: I'm just nervous that you will make
3 that representation and someone will rely on it and we'll be in
4 the middle of something --

5 THE COURT: I'm not going to do something that's not
6 clear. I thought, based on best estimate, even the longest
7 version is we would get to closing arguments next Thursday.

8 MR. WEINGARTEN: That's right, but --

9 THE COURT: All right. I won't say anything.

10 Bring them in.

11 (Jury present)

12 THE COURT: Members of the jury, unfortunately we need
13 to take an early lunch break so that the process can continue.
14 I apologize for the start and stop. I do assure you we're
15 doing everything we can to move things through quickly, and as
16 I said, we are making good progress in that regard.

17 So it's 11:30 now, we're going to resume at 12:30. I
18 apologize for deviating from the schedule. We are also going
19 to move to a larger courtroom, Courtroom 110. Mr. Scott is
20 going to show you how you enter there on your way down. He'll
21 facilitate so that you know where you're going, but we're going
22 to do that move during the lunch break.

23 So it is 11:20 now, 12:30 will be Courtroom 110, which
24 Mr. Scott will show you on the way out.

25 I do apologize, I like to have a predictable schedule,

K35TSAD3

Kim - Cross

1 and I apologize for the misinformation with respect to schedule
2 today, but we'll do our best to rectify it as soon as we can.

3 With that, I wish you an enjoyable lunch. We'll see
4 you in 110 at 12:30.

5 (Jury not present)

6 THE COURT: I think what makes sense is to -- I see
7 we've got representatives from the DE's Office, so we're going
8 to move all the materials down to 110 and get set up. I think
9 we should plan on meeting as soon as that is done, so I'm going
10 to presume about a half an hour to address the issues that we
11 need to address, either with respect to what the immediate
12 issue around moving the courtroom, but also to take on any of
13 the issues that were developing around questions as to law
14 meaning and the like so that we can, when we resume
15 examination, press forward without any additional interruption.

16 All right? Any matters to take up before we break?

17 I will see you in 110 as soon we can get going again,
18 and hopefully within a half hour.

19 (Continued on next page)

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K35TSAD3

Kim - Cross

1 AFTERNOON SESSION

2 (12:05 p.m.)

3 THE COURT: All right.

4 I suppose unsurprisingly, and as some of you or all of
5 you know, the press is aware of the issue. Let me again just
6 give complete clarity.

7 I haven't learned anything additional, but this is
8 what I know. So, one of the venire persons got a letter from
9 the health department saying that they were in temple on the
10 same days as someone who has been diagnosed with COVID-19, so
11 everyone in that situation has been contacted by the health
12 department and told to self-quarantine. The person who was
13 venire person on Monday has no signs or symptoms and has not
14 tested positive. So that's the information.

15 We'll be kept updated if there are any changes so we
16 are in a good situation in that sense. Because my immediate
17 proposal is communicating to the jury, and I think just the
18 simple explanation that I just gave you, that someone who was
19 in the venire has been asked to self-quarantine; people in
20 contact with that person, including as I understand it, family
21 members, are not being asked to self-quarantine in any way;
22 that we will be kept apprised if anything changes with respect
23 to the health of that person, which puts us in a more informed
24 situation than everyone that person rode the subway with that
25 day; and I'll keep them informed and we are on top of it,

K35TSAD3

Kim - Cross

1 including the very proactive step of moving to this courtroom
2 which we needed to do anyway since we were cramped.

3 That is my suggestion as to what to tell the jury as
4 soon as they come in so they are informed.

5 Any reactions to that?

6 MS. KIM: No objection, your Honor.

7 THE COURT: Can you pull up the mic.

8 It is even harder to hear here. Thank you.

9 MR. WEINGARTEN: I think perhaps you should go into
10 the jury room and tell them. I think there's going to be a
11 dramatic reaction.

12 THE COURT: That I should talk -- I can't hear you.

13 I want to hear you desperately.

14 MR. WEINGARTEN: Sorry.

15 THE COURT: Go ahead.

16 MR. WEINGARTEN: Better now. I think in a more
17 intimate setting with you in the jury room, I think that's
18 better. There's going to be a strong reaction if they're
19 sitting there. It's not likely to come out, I think you will
20 be more reassuring to them if you do it in the jury room.

21 THE COURT: That is not a bad suggestion.

22 MR. KROUSE: No objection, your Honor.

23 THE COURT: Obviously with the court reporter. They
24 may have some questions or express concerns and we will deal
25 with that. I have told you everything I know. I am not

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Kim - Cross

1 concerned. What I will make clear to them is we are on top of
2 it, we are in a good position for receiving information. A lot
3 of organizations and institutions are facing this kind of
4 remote contact, and I'll keep them informed, and we will keep
5 them on top of it. We're taking the extra precaution of simply
6 moving to this courtroom, which we did need to do anyway.

7 All right.

8 So then let's talk about our issues. There was the
9 immediate objection, Ms. Kim objected to the instruction on the
10 law.

11 So, Mr. Weingarten, I guess the question is how much
12 are you going to do of that?

13 MR. WEINGARTEN: I will go over there.

14 THE COURT: That would be great. Thank you.

15 MR. WEINGARTEN: So it's GX 601, page 6. If someone
16 is here to do that and put it up. I beg your pardon. It's 5.
17 Where I was is we were talking about services, and it is my
18 understanding that services in all the regs were never tied to
19 the financial services until 2012, and that's 427.

20 Before that there's nothing said about financial
21 services and financial activities being a service. Obviously,
22 in the normal world I would introduce 427. No, I shouldn't say
23 that. That would be my instinct, and I note that I guess I am
24 not supposed to do that, given where we are.

25 THE COURT: Because you would argue from that that the

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Kim - Cross

1 transactions in issue aren't illegal?

2 MR. WEINGARTEN: Of course.

3 THE COURT: And you can't make that argument to the
4 jury.

5 MR. WEINGARTEN: No. I would say, slightly different,
6 you could extrapolate. I would say, how in the world would my
7 client know, objectively speaking, the financial services were
8 services they didn't -- they saw no reason to put it on the
9 books until 2012. It is a powerful piece. Then from there I
10 would go to benefit received in Iran, and, you know, fuss with
11 him a little bit about what that means.

12 THE COURT: What does that mean?

13 MR. WEINGARTEN: Well, you know, it's 410. I can make
14 all the arguments -- not make all the arguments but try to make
15 the points on 410. What's the benefit? Where is it defined?
16 How in the world do you know what a benefit in Iran means?

17 THE COURT: I will hear from Ms. Kim.

18 MR. KROUSE: I am going to handle this, your Honor.

19 THE COURT: Could you pull up the mic.

20 MR. KROUSE: Yes. It sounds to me like, that
21 Mr. Weingarten wants to make a legal argument through this
22 witness when the Court is going to be instructing the jury
23 exactly what the words in the regulation mean.

24 So, first, as a factual matter it's just incorrect
25 that services was never defined. In 1995, in the general

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Kim - Cross

1 license, what was later called the U-turn, it says that
2 transfer instructions directing the movement of funds or the
3 performance of other banking services that would directly or
4 indirectly benefit persons in Iran or the government of Iran or
5 requests for the exportation of services.

6 So that is 1995.

7 Just as a factual matter, the question asked includes
8 in it a factual piece that's just flatly incorrect. But even
9 if it was correct, asking this witness to define services or to
10 explain to him the different regulations that define services
11 or when that happened or anything of that nature is irrelevant
12 and confusing to the jury. It should be excluded under 403.

13 The Court is going to -- and we will have a charge
14 conference over this, and I think there are some contested
15 issues, including 410, but the Court is going to decide how to
16 define services, how to define to Iran, and how to do so
17 consistent with the law and consistent with the Court's ruling
18 on the motion to dismiss.

19 This is, again, the defense trying to relitigate what
20 they lost on motion to dismiss. If this conduct didn't fall
21 under services as a matter of law, they would have won their
22 motion to dismiss. If this conduct --

23 THE COURT: The point that's being made, obviously, to
24 the extent Mr. Weingarten tries to argue that to the jury, it
25 will not be allowed. He can't make arguments as to what the

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1 law is consistent or inconsistent with the Court's ruling
2 because that's the Court's province. The contention being
3 made -- and it's been a boundary I've talked about
4 previously -- is, whatever the meaning of it is, there's
5 difficulty in knowing what's prohibited. That's the theme. It
6 changes, it's complicated, things are undefined, etc. That
7 question, I think that's appropriate. So it is, generally
8 speaking, an appropriate ground and the question is how to do
9 that.

10 Again, in light of the government putting on evidence
11 of the law, despite the ground we've covered, that allows him
12 to make an argument essentially, well, see, services isn't
13 defined and the laws change and the regs change, etc., to
14 suggest the mens rea piece. That's the issue.

15 MR. KROUSE: Yes, I think that is the issue. It is
16 just factually not true that services wasn't defined. So as a
17 matter of just fact I think that's misleading to the jury.

18 THE COURT: That is a redirect point.

19 MR. KROUSE: Or a 403 point, because it's leading to
20 confusion by the jury. If he's introducing in his question an
21 incorrect fact and we have advance notice of it or heard it,
22 that should be excluded on 403 grounds, because it is
23 confusing.

24 I agree with the Court that there is a line that -- or
25 one side of the line that the defense can explore, which is the

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1 law has changed perhaps, the meaning, you know, in his own
2 state of mind was unclear. There's been no factual proffer of
3 that here. The plain language of the statute or the regulation
4 will be defined and explained by the Court. I think that's an
5 important --

6 THE COURT: How about a limiting instruction?

7 So there's no question in the jury's mind, I will
8 instruct them as to the law, and to the extent there is
9 evidence coming in with respect to this particular piece of
10 evidence or that particular piece of evidence, it's coming in
11 not to inform the jury as to what the law is, because that's
12 the judge's job, but may only be considered for the purpose of
13 the defendant's state of mind or something like that.

14 Then there's a 403 question, because it can't be
15 anything. It has to be tethered to an available inference or a
16 direct connection as to Mr. Sadr's knowledge. But I think, as
17 the government says, this was the law and it was public and it
18 hasn't changed that much, and whatever the government's
19 argument is, that it's not complicated, there are these
20 generalized arguments, it is complicated and it changes a lot
21 and meanings aren't totally transparent.

22 So the government did it in its opening. The
23 government did it yesterday with the witness. I have to allow
24 it appropriately for the defense in order to make the state of
25 mind argument.

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Kim - Cross

I think, if kept at a general level and not too confusing and prejudicial, it can be done, and a limiting instruction would help ensure the jury understands the purpose for which it's coming in.

What's your response to that?

MR. KROUSE: Is that directed to the government?

THE COURT: Yes. I'm sorry, Mr. Krouse.

MR. KROUSE: That's OK, your Honor.

I think I understand the Court's ruling. I think that it is correct that the defense can, on a limited basis or not limited, but in a direct way explore this theme that the regs are complicated, that some of the terms may be ambiguous. But I think the way the question was phrased before the break it would still be objectionable because it's asking for Mr. Kim to opine on the meaning, and how the meaning of the word services has been defined or when it was defined or how it evolved over time or whatever, when in reality in 1995, it was defined.

So I object to the way the question was asked.

THE COURT: OK.

MR. KROUSE: I think a limiting instruction is a good idea. If, to the extent questions are asked about the meaning of words, the Court is going to instruct you at the end of this trial what the law is in this case, and any argument -- or any questions related to the meaning of words are not to be taken for the truth of what -- or not the truth, but the actual

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Kim - Cross

1 meaning of what those words are, but for the defendant's state
2 of mind or something to that effect.

3 THE COURT: So we will deal with the specific
4 questions at a general level. You are in agreement to the
5 general proposition and that a limiting instruction would be
6 appropriate.

7 Before we get to the specific instructions,
8 Mr. Weingarten, your response to a limiting instruction?

9 MR. WEINGARTEN: No objection.

10 MR. KROUSE: On the limiting instruction -- sorry, my
11 colleagues made a point -- I believe the Court said that it
12 would still have to be tethered to something that could be
13 proffered by the defense that the defendant didn't actually
14 have this state of mind. I haven't seen anything on that
15 still.

16 THE COURT: I think, yes. So any evidence around
17 specific language, around regulations to make an argument that
18 this is what Mr. Sadr thought, I do think what we are talking
19 about are the available inference as to uncertainty of relevant
20 law and changing meaning of relevant law, just as the
21 government is seeking the inference and put on evidence of the
22 existence of the law to go to knowledge. Right?

23 So I think for purposes of cross-examination questions
24 within the scope of the direct, obviously I am not going to let
25 a misstatement of the law lead a question, so we will have to

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Kim - Cross

1 deal with that, but that would be obviously a sustained
2 objection on 403 grounds.

3 But allowing questions to support the inference in
4 light of the government's opening that it wasn't complicated
5 and what it put on yesterday, it think it is the same
6 inferences being sought.

7 So I would allow the questions on cross that go to
8 complexity, ambiguity, lack of public notice, uncertainty, and
9 the like. That's where we are.

10 So on the specific question, Mr. Weingarten, can you
11 rephrase the question so that it's not embedding a false
12 premise?

13 MR. WEINGARTEN: Obviously, I didn't believe it to be
14 a false premise when I said it, so I'm going to check.

15 THE COURT: OK. What else do you have in this area?

16 MR. WEINGARTEN: Well, you know, I am thinking about
17 whether or not I can squeeze benefit in. It is the 410
18 question, and, you know, what's a benefit that goes to Iran.
19 You know, there are a thousand things that could be said about
20 it, and I will decide whether or not it's general complexity or
21 whether or not I'm too specific to arguing the law. I may or
22 may not try to do that.

23 MR. KROUSE: This was directly litigated in the motion
24 to dismiss and rejected by the Court. So this idea that the
25 defense has set forth in their motion to dismiss and continues

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1 to try to argue is that 410 somehow doesn't apply to the
2 conduct in this case. The Court has rejected that.

3 So I think any questions bearing on the benefit to
4 Iran as it being somehow not part of the regulatory framework
5 here is squarely violating the province of the Court to
6 instruct the jury to the law, and it contravenes the Court's
7 ruling, which was quite clear, that that legal interpretation
8 or legal argument by the defense has been rejected.

9 THE COURT: Right. But as I've said all along, even
10 wrong interpretations of the law could be appropriate if
11 tethered to Mr. Sadr's state of mind. So that's the question.

12 MR. WEINGARTEN: Can I just try one.

13 We are talking about the coronavirus, how about a
14 hypothetical like this, not asking him his opinion, but asking
15 him where would you find the answer: I devised the cure to
16 coronavirus, and I used an American bank. There is an obvious
17 benefit in Iran. Is that a violation of the sanctions? This
18 is coming out of the top of my head, but you get the point.
19 The point being there's inherent confusion in the word benefit
20 that's never explicitly explained.

21 MR. KROUSE: I think money is pretty clearly a
22 benefit. I don't think there's much ambiguity, and this case
23 is just about money.

24 As creative as that hypothetical may be, it's not
25 tethered to the facts in this case. It's not tethered to

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Kim - Cross

1 anything about Mr. Sadr's state of mind. The cases about money
2 transfers that were in the government's view for the benefit of
3 Iran or people in Iran, and that's what the government is
4 trying to prove and what we will argue to the jury.

5 THE COURT: And that he was aware of that of that
6 prohibition?

7 MR. KROUSE: That he was aware of the prohibition,
8 yes. So there's nothing in here about Mr. Sadr thinking that
9 he was providing the coronavirus or any or sort of abstract
10 benefit to an Iranian person or to an Iranian entity. We are
11 talking about money. I don't think there's much ambiguity in
12 the word benefit.

13 MR. WEINGARTEN: I think there is a whole line of
14 questioning that could happen that would elucidate just the
15 point. I mean, where do you draw the line? It's never clear.
16 There's inherent ambiguity with this concept.

17 MR. KROUSE: That's --

18 THE COURT: Excuse me.

19 I think there's two potential problems, and I'm going
20 to preclude either. One is a nullification problem. To the
21 extent you start suggesting an inherent ambiguity, you are
22 getting I think toward a nullification argument. I know you
23 would say to the jury I would never suggest such a thing to
24 you -- that's my best boomerang voice -- and then say the thing
25 you would never suggest.

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Kim - Cross

1 MR. WEINGARTEN: Your Honor --

2 THE COURT: We've spent enough time together.

3 There's the nullification problem.

4 Then there's the infringing on the province of the
5 Court to instruct the jury on what the law is. Those are
6 related.

7 So I think, you know, the practical reality of how to
8 implement the line that the Court has imposed is still there.
9 I think anything that there's evidence to tie to Mr. Sadr's
10 knowledge, questions about complexity and ambiguity and
11 changing law and the like is appropriate.

12 Framing questions, for example, along the lines of
13 couldn't someone who reads this word think it means X, Y, and
14 Z, wouldn't somebody who doesn't stay on top of the law that
15 changes this frequently have uncertainty about what is in
16 existence at any particular moment, a limiting instruction that
17 makes it clear the purpose for which the evidence is being
18 permitted to go to the jury is appropriate. But specific
19 arguments with the witness about what the meaning of the law is
20 I won't allow because of the nullification problem and the
21 interfering with the Court's role of the instructor of the law
22 and additional complications around introducing potentially an
23 irrelevant law.

24 So those are all 403 problems. That's the line.

25 We are still waiting for a couple more jurors.

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Kim - Cross

1 I will ask you to abide by it. If there are
2 objections, I know what the arguments are, and I'll rule.

3 MR. WEINGARTEN: Sure. What I'll do, when we finish,
4 I'll sit down and think it through and decide.

5 THE COURT: Yes. I would also like you to confer on a
6 limiting instruction.

7 MR. WEINGARTEN: Sure.

8 THE COURT: OK. Anything else?

9 We are waiting on a few more jurors. When they're
10 here, I will meet with them with the court reporter and report
11 back.

12 (Recess)

13 (In the jury room; counsel and defendant not present)

14 THE COURT: I never get to talk to you before the end,
15 but I want to let you know something that is going on.

16 This is a much more comfortable jury room.

17 I learned right before the break that someone who was
18 in our big selection that first day, we call it the venire, is
19 not sick, but they go to synagogue with somebody who has been
20 diagnosed with the coronavirus and were in synagogue the same
21 day as the person who has been diagnosed with the coronavirus.

22 So the person who was in the courtroom with us on
23 Monday again is not sick, but has been informed that they were
24 in synagogue the same day as somebody who has been diagnosed
25 with the coronavirus. The person that we were in the courtroom

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Kim - Cross

1 with is now self-quarantined. Their family members don't have
2 to be self-quarantined. People who had contact with them, like
3 us, don't have to be self-quarantined.

4 Unlike whoever rode with them on the subway that day,
5 I will learn if that person gets sick, and therefore you will
6 all learn if that person get sick. So that is not an issue.
7 We are at an advantage because we will have that information if
8 something develops.

9 The district executive, which is the executive office
10 that runs this courtroom, has been in regular contact with the
11 health department. As you can imagine, this is an issue, the
12 sort of secondary, tertiary contact issues are developing
13 wherever there are large public gatherings.

14 What we're doing is, one, making sure everybody is
15 informed; two, staying in contact with the local health
16 department to make sure that we know everything that can be
17 known; and, three, taking extra precautions, including moving.
18 The DE's office, the district executive's office wants to do a
19 cleaning of my courtroom.

20 You may have seen, for example, New York Law School
21 closed yesterday for a cleaning basically for the same reason.
22 Someone who was in synagogue with the person who was diagnosed
23 then was in school. We needed to move to a bigger courtroom
24 anyway, but because they want to clean my courtroom as an extra
25 precaution, that was the impetus I needed to say let's go do

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Kim - Cross

1 that now.

2 That's where we are. I promise you, you will be kept
3 informed. As soon as I learn anything that affects anyone who
4 was in that room, you will learn it. I obviously made the
5 lawyers aware of the same situation.

6 That's it. I just wanted to tell you let you know
7 what is going on, basically as soon as we learned it and I
8 could communicate it to the lawyers and sort of figure out the
9 courtroom change and that sort of thing.

10 That's where we are. I hope you have comfort in
11 knowing that I will do everything in my power to make sure that
12 you have any relevant information and knowledge.

13 Again, I think because of that we're sort of in a more
14 informed position than, for example, whoever the person who was
15 in the courtroom with us on Monday rode the subway with or went
16 to the movies with and the like. That is what I have to say to
17 you.

18 JURORS: Thank you.

19 THE COURT: I thank you very much. We will resume in
20 just a few moments.

21 (In open court)

22 THE COURT: All right. I think it went fine with the
23 jury. They seemed accepting of the information, and I tried to
24 do what I could to truthfully explain how everything is fine
25 and we are in a good situation because we will be notified and

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Kim - Cross

1 we are on top of it and taking precautions. That all seems
2 good.

3 Do you have a proposed limiting instruction?

4 MR. KROUSE: We drafted one, your Honor.

5 I can read it or hand it up.

6 THE COURT: I will take it in writing. Thank you.
7 I'm hoping your handwriting is better than mine, Mr. Krouse.

8 MR. HEBERLIG: We haven't seen it, Judge.

9 THE COURT: Oh, I thought you worked on it together.
10 Thank you, Mr. Heberlig.

11 OK. Let me hear it, please. I suppose I should have
12 just had him read it, then we would all have it on the
13 LiveNote. It is a bigger courtroom but no easier to find your
14 way here.

15 MR. HEBERLIG: I just added a sentence. So I wanted
16 to --

17 THE COURT: Yes. Go ahead.

18 All right. Any concern with the sentence added?

19 MR. KROUSE: Yes, your Honor. It's the government's
20 view that just the general instruction that it's the law, the
21 law will be defined by the Court. I don't believe that -- or
22 maybe something, this evidence was admitted for a different
23 purpose.

24 THE COURT: That's what the sentence does.

25 MR. KROUSE: What it says is to prove the defendant's

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Kim - Cross

1 state of mind.

2 THE COURT: The testimony was admitted as relevant to
3 the defendant's state of mind. I mean, a limiting instruction
4 usually goes the following evidence was admitted for this
5 limited purpose. That's the purpose for which you can consider
6 it and no other purpose.

7 So we have to tell them the limited purpose that it's
8 admitted for, and then with the caution that the testimony was
9 admitted for the purpose or -- I think actually the testimony
10 was admitted as relevant to the defendant's state of mind. You
11 may only consider it for that purpose is the language I propose
12 adding, and then go on, as I mentioned in my initial
13 instructions to you, I as the judge will instruct you on the
14 law and the meaning of the law and you will be required to
15 follow my instructions.

16 OK?

17 MR. KROUSE: OK, your Honor. Thank you.

18 THE COURT: OK?

19 MR. HEBERLIG: Yes, your Honor.

20 THE COURT: OK.

21 We will bring out the jury. Where is Mr. Kim?

22 Please bring him in and on the witness stand.

23 Counsel, I'll give it when I think it is appropriate.

24 I ask you to indicate if either side thinks it should be given if I haven't given it by then. OK?

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Kim - Cross

1 MR. KROUSE: OK, your Honor.

2 THE COURT: Mr. Weingarten, you'll let me know if you
3 think it should be given.

4 I'll make my own judgment as well.

5 (Continued on next page)

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Kim - Cross

1 (Jury present)

2 (Witness resumed)

3 THE COURT: Thank you, everyone. A little shorter
4 distance to the jury box this way.

5 Please be seated.

6 Thank you, members of the jury. We will continue with
7 the cross-examination of Mr. Kim.

8 Mr. Weingarten, you may continue.

9 BY MR. WEINGARTEN:

10 Q. Mr. Kim, good afternoon.

11 A. Good afternoon, sir.

12 Q. Just a little bit more.

13 A. OK.

14 Q. So, we were looking at the slides that the government put
15 up. Why don't we turn to slide 7. So slide 7 talks about or
16 represents that there was an executive order in 2012 about
17 blocking.

18 Do you see that?

19 A. Yes.

20 THE COURT: Let me just check. Any issues --

21 JUROR: I can see.

22 THE COURT: You can't see it?

23 Raise your hand if you can't see. OK. We're good.

24 Thank you.

25 BY MR. WEINGARTEN:

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Kim - Cross

1 Q. I believe, as you testified on direct, blocking is and
2 freezing are essentially the same, and in 2012 there was a new
3 remedy that was given to OFAC for blocking that didn't exist
4 before; is that fairly stated?

5 A. Yes.

6 Q. OK. And it's the freezing of property of the government of
7 Iran and Iran financial institutions, correct?

8 A. Yes.

9 Q. OK. And those were the targets of the blocking provisions,
10 correct?

11 A. Of this executive order, that's correct.

12 THE COURT: If you could just speak into the
13 microphone.

14 THE WITNESS: Sure.

15 THE COURT: Mr. Kim. Thank you.

16 BY MR. WEINGARTEN:

17 Q. Let's turn to slide 9 and Bank Saderat. This is
18 identification of Iranian government-owned financial
19 institutions where sanctions were imposed.

20 Is that what we have here?

21 A. Yes.

22 Q. OK. And you talked in your testimony about SDNs. An SDN
23 is what?

24 A. SDN is whose property is blocked.

25 Q. Before 2012 were there SDNs?

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Kim - Cross

1 A. Before 2012 there were SDNs, yes.

2 Q. But there was no blocking before 2012? Isn't that what you
3 just said?

4 A. No.

5 Q. All right. So there was a statute or a reg passed in 2012
6 for blocking for government property, and -- government of Iran
7 property and Iran financial institutions, blocking and freezing
8 property. That's the slide we just saw. That's 7, correct?

9 A. Yes. But I need to explain a little bit too to answer
10 correctly.

11 THE COURT: Go ahead.

12 A. The Executive Order 13599 we saw before, that's the
13 blocking EO about government of Iran and Iranian financial
14 institutions, but Iranian financial institutions and
15 subdivisions of Iranian government were blocked under other
16 programs.

17 Q. OK.

18 A. So Iranian -- the remaining program, the objectives of each
19 of those programs overlapped.

20 Q. OK.

21 A. So other banks were blocked too.

22 Q. So the government of Iran in 2012 in a special program had
23 a new block reg? Is that what you are saying?

24 MS. KIM: Objection.

25 A. What I'm saying --

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Kim - Cross

1 THE COURT: Just a moment.

2 Overruled to the extent I think it was a clarifying
3 question.

4 Go ahead.

5 A. What I'm saying is Iranian financial -- some of Iranian
6 financial institutions were blocked before.

7 Q. OK. The focus on -- never mind. I'll move on.

8 On 9, it's Bank Saderat. Bank Saderat is one of the
9 larger banks, one of the larger I think you testified
10 government-owned banks in Iran?

11 A. Yes.

12 Q. And there are many, many local offices of Bank Saderat in
13 Iran and elsewhere?

14 A. Yes.

15 Q. Obviously it's not OFAC's business who is the depositor in
16 Iran in Bank Saderat, that's not what you're interested in,
17 correct?

18 A. Not exactly because -- can I explain?

19 Q. Sure.

20 A. Yes. If Bank Saderat's clients are SDNs, then Bank
21 Saderat, of course, will be under our monitoring, and then Bank
22 Saderat, there's a huge chance to be designated as --

23 Q. I guess here's the issue. Obviously OFAC is interested if
24 Bank Saderat is working with the Iranian government building
25 nukes or supporting terror around the world, fair?

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Kim - Cross

1 A. That's fair.

2 Q. Of course. But if mom and pop down the street in Tehran is
3 depositing money or writing checks on a Bank Saderat account
4 you are not interested in?

5 A. No.

6 Q. You are not interested in the typical everyday transactions
7 that Bank Saderat engages in with Iranians, correct?

8 A. That's correct.

9 Q. And if Bank Saderat had a transaction with someone outside
10 of Iran in euros, that wouldn't be your business either,
11 correct?

12 A. It could. That's too generalized a question to me.

13 Q. OK. Too general?

14 A. Yes.

15 Q. Let's look at 10. So, October 25, 2007, OFAC designation,
16 and you have Iran Islamic Revolutionary Guard Corps, IRGC,
17 correct?

18 A. That's correct.

19 Q. That's the paramilitary or military organization that
20 supports the theocracy, correct?

21 A. That's correct.

22 Q. And there are any number of sanctions imposed against them,
23 correct?

24 A. That's correct.

25 Q. Because there's a belief on your part in OFAC that they are

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Kim - Cross

1 primarily responsible for any nukes and any activity relating
2 to terrorism, fair?

3 A. That's fair.

4 Q. OK. Now, you also have Oriental Oil Kish in your list
5 here, Iranian oil company owned or controlled by IRGC. Did you
6 do an investigation as to what is the story what Oriental Oil
7 Kish?

8 A. OFAC did.

9 Q. And did you learn that there was a property that we are
10 talking about with Oriental Oil Kish that used to be owned by
11 Halliburton?

12 A. I cannot say that I knew, but OFAC -- this designation is
13 done by another division in OFAC. It is not my division. So I
14 would probably, of course, but I cannot say from my own
15 knowledge.

16 Q. Well, did you learn that my client's father participated
17 with others in an investment into this property for
18 Halliburton?

19 MS. KIM: Objection.

20 THE COURT: Just a minute.

21 Sustained.

22 Q. Did you learn that Oriental Oil Kish property was stolen by
23 the IRGC?

24 MS. KIM: Objection.

25 THE COURT: Sustained.

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Kim - Cross

1 MR. WEINGARTEN: He said he knew, your Honor.

2 THE COURT: Sustained.

3 Q. So you don't know of your personal knowledge what happened
4 to this property?

5 A. What I know is they are designated, and then what I know is
6 when designation happens we internally provide very brief
7 summary that why it is designated so that the other OFAC
8 internally know, but actual designation and the information in
9 the designation package that belongs to a specific division.

10 Q. You don't have personal knowledge?

11 A. I don't.

12 Q. OK. Moving on to page 11, so more designations.

13 Were you told to look to see whether or not there were
14 designations for these people? How did these people appear or
15 how did these institutions appear on the chart?

16 A. The prosecution asked.

17 Q. The prosecution asked you to look for these people?

18 A. They said, Do you know this bank? I said, yes.

19 Q. OK. Let's look at the bottom one, the EN Bank.

20 A. Uh-huh.

21 Q. The EN Bank was designated July 12, 2012. Do you see that?

22 A. Yes.

23 Q. Did you come to learn that on July 12, 2012, all the
24 financial institutions of Iran were designated, not just EN
25 Bank?

K35TSAD3

Kim - Cross

1 A. I didn't know all the financial institutions of Iran.

2 Q. You didn't know?

3 A. Not this one. This one was the -- one, 13599, the blocking
4 EO, it designates, it says, All Iranian financial institutions
5 are blocked, right. That executive order is blocking. And
6 then in order to make that blocking order into, put into SDN's
7 system, then we need to have OFAC's designation as an SDN so
8 that they go into it.

9 Q. However you did it, when you hit EN Bank to look in the
10 computer to see if on that day EN was designated, did you see
11 hundreds and hundreds of other banks that were also designated?

12 A. Yes. I don't know whether hundreds but --

13 Q. Many?

14 A. Yes.

15 Q. Did you come to learn several years later all the banks
16 were taken off the SDN list in 2016? Did you come to learn
17 that?

18 A. I know many of them were.

19 MS. KIM: Objection.

20 THE COURT: Overruled.

21 A. Many of them were delisted temporarily, but that was
22 conditional, and most of the banks were -- remained. The
23 effect of delisting was not, was not significant because
24 Iranian programs designated stayed there. But what is lifted
25 temporarily was other programs' designations. So one bank can

K35TSAD3

Kim - Cross

1 be designated multiple times based on many different programs.

2 So, for example, one designation is lifted doesn't mean that
3 this bank is now free to transact with.

4 Q. Are you suggesting that EN Bank was still listed in 2016?

5 A. As far as I know, yes.

6 Q. All right. To your knowledge, when you looked at EN Bank,
7 did you see any special designation for wrongdoing by EN Bank?

8 A. That I don't remember.

9 Q. All right. You introduced yourself as a person in the
10 enforcement division of OFAC, is that correct?

11 A. That's correct.

12 Q. So you handle cases and make a judgment whether or not
13 people dealing in some form or fashion should be punished?

14 A. Yes.

15 Q. I believe you testified that about 90 percent of the
16 violations that you find there's no actual punishment, is that
17 what you said?

18 A. Not exactly.

19 Q. So there's a letter that you send?

20 A. Yes.

21 Q. So you have a hundred cases that come on your desk and the
22 worst you do for 90 of them is you send somebody a letter?

23 A. Yes.

24 (Continued on next page)

K35TSAD5

Kim - Cross

1 BY MR. WEINGARTEN:

2 Q. No fine?

3 A. No, no.

4 Q. No referral to the prosecutors?

5 A. In those instances, probably not.

6 Q. Of the hundred OFAC cases that you handle at a time, how
7 many referrals do you make to the prosecutors, average?

8 A. Out of hundred, two or three.

9 Q. Two or three. Isn't the percent actually 95 percent are
10 occasions when nothing happens to the person dealing with Iran
11 other than, at worst, a letter, as opposed to 90 percent?

12 A. That description is not exactly correct because receiving
13 the warning letter or cautionary letter has a lot of meaning to
14 it and it has a consequence if you receive that.

15 MR. WEINGARTEN: Maybe we'll get some help. DX47 is
16 the document we talked about this morning, your Honor.

17 THE COURT: Okay.

18 MR. WEINGARTEN: Put it in front of the witness,
19 please.

20 MS. KIM: It's not in evidence, your Honor.

21 MR. WEINGARTEN: I thought you ruled it in.

22 THE COURT: It hasn't been admitted.

23 MR. WEINGARTEN: Sorry.

24 Q. Do you see the document in front of you, sir?

25 A. Yeah.

K35TSAD5

Kim - Cross

1 Q. And is it a document entitled U.S. Department of Treasury
2 and Federal Banking Agency's Joint Fact Sheet on Foreign
3 Correspondent Banking Approach to BSA AML and OFAC Sanctions,
4 Supervision and Enforcement. Do you see that?

5 A. Yes.

6 Q. OFAC is your organization, correct?

7 A. That's correct.

8 Q. And this is a summary of two things, basically, is it not,
9 the enforcement procedures that you're talking about and the
10 responsibilities for correspondent bank, fair?

11 MS. KIM: Objection.

12 THE COURT: Just a moment.

13 MS. KIM: Your Honor, we ask that the witness have an
14 opportunity to review the document.

15 THE COURT: That's fine. Can you give the witness a
16 full copy?

17 MR. WEINGARTEN: May I approach?

18 THE COURT: You may.

19 Q. Have you seen this document before?

20 A. No.

21 Q. So you are familiar with the United States Department of
22 Treasury, correct, you work there?

23 A. Yes.

24 Q. And you work at OFAC, correct?

25 A. That's correct.

K35TSAD5

Kim - Cross

1 Q. And this is a joint fact sheet on foreign correspondent
2 banking, and it also talks about enforcement, is that correct?

3 MS. KIM: Objection.

4 THE COURT: Sustained.

5 MR. WEINGARTEN: I move it into evidence, your Honor.

6 MS. KIM: The government objects.

7 THE COURT: Anything different than what we discussed?

8 MR. WEINGARTEN: It's what we discussed.

9 THE COURT: For the government, grounds?

10 MS. KIM: Not for impeachment purposes and all the
11 other reasons we discussed. He has never seen this document.

12 THE COURT: Overruled.

13 (Defendant's Exhibit 47 received in evidence)

14 Q. Let's move to FINCEN and OFAC.

15 What is FINCEN, sir?

16 MS. KIM: Your Honor, could we make clear what the
17 date is on this document from the first page?

18 MR. WEINGARTEN: August 30, 2016, document entitled
19 United States Department of Treasury and Federal Banking
20 Agency's Joint Fact Sheet on Foreign Correspondent Banking
21 Approach to BSA, AML and OFAC Sanctions, Supervision and
22 Enforcement.

23 Q. Let's turn to page 3, and we see FINCEN and OFAC, correct?

24 A. Yes.

25 Q. And what is FINCEN?

K35TSAD5

Kim - Cross

1 A. FINCEN is one of the Treasury's -- one of agencies that
2 belongs to the Treasury, and it collects reports from banks
3 about suspicious banking activities, and it works as like
4 information center about what is going on in banks.

5 Q. Let's see what this report says. FINCEN and OFAC are also
6 essential to the effectiveness of the United States BSA, AML
7 framework and sanctions regime. What is BSA and AML?

8 A. BSA is the Bank Secrecy Act, and AML is Anti-Money
9 Laundering.

10 Q. So FINCEN has independent enforcement authority to impose
11 CMPs and may seek equitable relief against financial
12 institutions for non-compliance with BSA. What are CMPs?

13 A. Civil Monetary Penalties.

14 Q. Let's jump down and move from FINCEN to OFAC, fourth line
15 from the bottom.

16 Similarly, in certain circumstances, OFAC -- and
17 that's you, of course, correct?

18 A. Yes.

19 Q. -- will consult with relevant FBAs regarding the quality
20 and effectiveness of an institution's compliance program when
21 determining the appropriate enforcement response.

22 And when talking about an institution's compliance
23 program, you're talking about a bank, right, or financial
24 institution?

25 A. Yeah.

K35TSAD5

Kim - Cross

1 Q. OFAC investigates cases of sanctions violations, many of
2 which, over 95 percent, are closed with administrative measures
3 such as cautionary or no action letters.

4 That's what you said before, correct?

5 A. Yes.

6 Q. But you said 90, they're saying 95, right?

7 MS. KIM: Objection, your Honor, it's a
8 mischaracterization of what he actually said.

9 THE COURT: Overruled.

10 A. I said less than ten percent.

11 Q. Sorry?

12 A. I said less than ten percent.

13 Q. I beg your pardon, I believe you said ten. This means that
14 less than five percent of all cases of sanctions by --
15 sanctions-related violations investigated by OFAC have resulted
16 in a civil monetary penalty or other public enforcement
17 response. Do you see that?

18 A. Yes.

19 Q. So we're clear, for every hundred cases you get, 95 result
20 in something less than a monetary penalty, correct?

21 A. That's correct.

22 MR. WEINGARTEN: Can I have one second, please.

23 THE COURT: Yes.

24 MR. WEINGARTEN: Could I have DX1352 put up, please?

25 THE COURT: Sorry, what was the number?

K35TSAD5

Kim - Cross

1 MR. WEINGARTEN: 1352, just for the witness.

2 Q. Now is there such a thing at OFAC as frequently asked
3 questions and answers?

4 A. Yes.

5 Q. What is that?

6 A. That's OFAC's notice to the public saying that this will be
7 our answers if anybody has these types of questions.

8 Q. So people -- do you make up the questions or do people
9 actually write them in?

10 A. Both.

11 Q. And have you ever seen the question on 1352?

12 A. Yes.

13 MR. WEINGARTEN: Move it in, your Honor.

14 MS. KIM: The government objects.

15 THE COURT: As discussed, overruled.

16 (Defendant's Exhibit 1352 received in evidence)

17 BY MR. WEINGARTEN:

18 Q. Would you like a paper copy or can you read it up there?

19 A. It would be all right.

20 Q. On February 14, 2008, OFAC issued guidance stating that the
21 property and interests in property of an entity are blocked if
22 the entity is owned, directly or indirectly, 50 percent or more
23 by a person whose property and interests in property are
24 blocked pursuant to an executive order or regulations
25 administered by OFAC.

K35TSAD5

Kim - Cross

1 Does that mean if more than 50 percent of an entity is
2 an SDN, the property is blocked, is that what you're saying?

3 Is that the import of that sentence?

4 A. Can you repeat?

5 Q. Maybe if I read the next sentence it will be clear.

6 We act as an intermediary bank in wire transfers
7 between other banks.

8 So that's the correspondent bank that you described
9 yesterday, right?

10 A. Mm-hmm.

11 Q. Does OFAC expect banks that are acting as financial
12 intermediaries to research non-account parties that do not
13 appear on the SDN list but are involved with or referenced in
14 transactions that are processed on behalf of correspondents?

15 You got that question?

16 A. Yeah.

17 Q. Could you translate that in simple English?

18 Can I help you here, maybe? Isn't the issue --

19 MS. KIM: Could you give him a minute to read the
20 document?

21 MR. WEINGARTEN: That's fine.

22 A. Yes. In other words, in plain language, does OFAC expect
23 banks to do due diligence on the bank's client's client.

24 Q. So is the question: If the correspondent bank has a
25 transaction, wired funds that go through the correspondent

K35TSAD5

Kim - Cross

1 bank, and neither party, not the party presenting the money or
2 the party receiving the money, is on the SDN list, correct?

3 Isn't the question --

4 A. The question is whether OFAC expects the correspondent
5 banks to know about not only sender -- not about the bank that
6 send the transfer order, whether correspondent bank should know
7 about the parties involved in the transaction.

8 Q. And isn't the answer if neither party is on the SDN list,
9 then the correspondent bank has no responsibilities at all?

10 A. Answer to question is no.

11 Q. Well, isn't that what is said on this piece of paper?

12 MS. KIM: Where, your Honor?

13 Q. Let's see.

14 A. This is the question, but I didn't look at the answer part
15 yet.

16 Q. Okay. Let's see what is actually written here, second
17 paragraph, last sentence. Let's highlight it, beginning with
18 "In instances where all three conditions are met," I guess we
19 have to look at the conditions. Let's go back to the top
20 paragraph 2. The answer to question 116.

21 A wire transfer in which an entity has an interest is
22 blocked property if the entity is 50 percent or more owned by a
23 person whose property and interests in property are blocked.

24 That's an SDN, right?

25 A. Yes.

K35TSAD5

Kim - Cross

1 Q. Let's continue. This is true even in instances where such
2 a transaction is passing through a U.S. bank that, one, is
3 operating solely as an intermediary. That's the correspondent
4 bank, correct?

5 A. That's correct.

6 Q. And two, does not have any direct relationship with the
7 entity, for example, the entity is a non-account party, so
8 that's a standard wire procedure, and three, does not know or
9 have reason to know the entity's ownership or other information
10 demonstrating the blocked status of the entity's property, EG,
11 the entity is located in Cuba.

12 That means the correspondent bank has no reason to
13 believe on either side of a transaction is a SDN, fair?

14 A. Not fair because of the third condition, does not know.

15 Q. So we're saying the same thing, the correspondent bank
16 doesn't know, has no reason to believe anybody is an SDN?

17 A. Yeah, right.

18 Q. Okay. OFAC would not expect the bank to research the
19 non-account parties listed in the wire transfer that do not
20 appear on the SDN list, and accordingly, would not pursue an
21 enforcement action against the bank for having processed such a
22 transaction.

23 A. That's correct, yeah.

24 Q. And you agree with that, right?

25 A. Yeah.

K35TSAD5

Kim - Cross

1 Q. So if the correspondent bank has no reason to believe that
2 anybody on either side of the transaction is on the SDN list,
3 that correspondent bank has no issues with you?

4 A. That is not exactly true. We have issue, but we will not
5 take like monetary penalties. Here, will not pursue an
6 enforcement action. When we say this, this one usually means
7 public enforcement action, if they keep doing this, is that
8 they receive cautionary letter and it goes onto their file.

9 Q. Is that what is said here? Is there another sentence that
10 says what you just said?

11 MS. KIM: Objection.

12 THE COURT: Sustained. That wasn't the question.

13 Q. Is there any further guidance -- is there anywhere that
14 this question is supplemented in the OFAC records where
15 additional information is provided?

16 MS. KIM: Objection.

17 THE COURT: Sustained.

18 Q. So you said in your direct testimony that OFAC is a strict
19 liability organization, is that correct?

20 A. That's correct.

21 Q. So of the 100 cases that typically fall on your desk, how
22 many are cases where entities or individuals have been punished
23 in any way, shape or form for conduct where there was
24 absolutely no knowledge on their part that they did anything
25 wrong?

K35TSAD5

Kim - Redirect

1 A. It depends how you interpret punishment, but we take
2 enforcement action to -- that includes cautionary letter to
3 party who unwittingly getting involved in the transaction that
4 is in violation of a regulation.

5 Q. And they got a letter from you?

6 A. Yep.

7 Q. So that was the punishment, they got a letter?

8 A. Yep.

9 Q. Which cases were they?

10 MS. KIM: Objection to form.

11 THE COURT: Sustained.

12 MR. WEINGARTEN: I have nothing further.

13 THE COURT: Okay. Ms. Kim.

14 REDIRECT EXAMINATION

15 BY MS. KIM:

16 Q. Just a few questions, Mr. Kim.

17 MS. KIM: Mr. Milione, if we could please pull up
18 Defense Exhibit 1352, which was just on the screen.

19 Q. And actually, while you're doing that, I'll ask you a
20 little bit about enforcement actions at OFAC.

21 So you testified on direct and also a minute ago when
22 defense counsel asked you about OFAC's enforcement actions,
23 about monetary penalties as well as cautionary letters. Can
24 you describe for the jury what a cautionary letter is?

25 A. Yes, the way OFAC operate is we investigate the potential

K35TSAD5

Kim - Redirect

1 violation, the transaction, and then when the transaction is in
2 violation, for example, U.S. food was exported to Iran, then we
3 look at the transaction and all the parties involved in that
4 transaction and we see U.S. manufacturer, freight forwarder,
5 carrier and so on and up to the Iranian recipient.

6 THE COURT: I didn't hear you.

7 THE WITNESS: Up until the Iranian recipient of the
8 goods.

9 THE COURT: Iranian recipient, okay.

10 A. Then we analyze who was the most responsible for this
11 transaction, and then somebody -- if everybody did it by
12 mistake, then it's one story, but if somebody hide some key
13 information there so all other get involved in this without
14 knowing, then we definitely go after the party who did
15 something to hide the key information that the other parties'
16 compliance was not able to catch, then we go after the most
17 responsible party with monetary penalty as much as we can.

18 For others, if you look at their compliance program
19 it's so weak so they are prone to fall into this kind of
20 problems, then we issue cautionary letter. If that party
21 accumulate cautionary letter, it is a different story, it is a
22 pattern for them, they seriously let something, if something
23 comes up involving that party, next time that party will be on
24 the list for monetary penalties. That's how it goes.

25 So cautionary letter, we issue can cautionary letter

K35TSAD5

Kim - Redirect

1 normally to a party who unwittingly committed the violation,
2 but yeah, the intentional -- for a party who intentionally
3 tried to get around or intentionally tried to breach the rule,
4 then we go after them with monetary penalty as much as we can.

5 Q. And so I'm sorry, Mr. Kim, when you speak could you be sure
6 to speak into the microphone, thank you.

7 So earlier I think you started to say that cautionary
8 letters have meaning?

9 A. Yes.

10 Q. And fair to say that you just testified that part of that
11 meaning is because if you receive multiple cautionary letters,
12 that could impact the decision of OFAC to bring an enforcement
13 action down the line?

14 A. Yes, but that's the second one. The first one is the party
15 who received cautionary letter is in violation of the
16 transaction, that's why they received the cautionary letter; if
17 they don't, they will receive no action letter. There's a
18 special name for that. But a cautionary letter means you
19 violated, but we are just giving a pass this time because looks
20 like you unwittingly fell into this problem.

21 Q. And earlier there was some discussion about what
22 percentage, approximately, of cases where OFAC finds there was
23 a violation. What percentage of those cases results in
24 monetary penalties?

25 A. Normally I say less than ten percent, around, but if he

K35TSAD5

Kim - Redirect

1 shows the other calculation is five percent, that range.

2 Q. Somewhere around less than ten percent, five percent.

3 And you testified yesterday on direct that the
4 potential penalties could reach hundreds of millions of
5 dollars, is that correct?

6 MR. WEINGARTEN: Beyond the scope, your Honor,
7 repeating yesterday.

8 THE COURT: Sorry?

9 MR. WEINGARTEN: Beyond the scope of my cross and it
10 was repeated yesterday.

11 THE COURT: Sustained.

12 Q. So now if we could move to Defense Exhibit 1352. And do
13 you see this was the exhibit that defense counsel just walked
14 you through. Are you familiar with something called the 50/50
15 rule or referred to as a 50/50 rule?

16 A. It is called -- we call it 50 percent rule.

17 Q. 50 percent rule. Very generally, could you please explain
18 what the 50 percent rule is.

19 A. Yes, if an entity is owned 50 percent or more by a blocked
20 person, then the first entity's property is also blocked.

21 Q. So just clarify, does this document refer to the 50 percent
22 rule, does it discuss the 50 percent rule?

23 A. I think so, yes.

24 MS. KIM: If we could take this down, Mr. Milione.

25 Q. And apart from the 50 percent rule, when an entity is not

K35TSAD5

Kim - Redirect

1 partially owned or controlled by SDN, so is not an SDN, not
2 affiliated with an SDN but is Iranian and headquartered in
3 Iran, do Iran sanctions apply to that entity?

4 A. Yes.

5 Q. Defense counsel asked you some questions, I think it was
6 this morning, about the comprehensive ban on exports to Iran,
7 also known as the ITSR. Do you remember that?

8 A. Yes.

9 Q. And you testified on cross-examination that the ITSR can be
10 violated if services are sent directly or indirectly to Iran.
11 Do you remember that?

12 A. Yes.

13 Q. Mr. Kim, are you familiar with the term "front company?"

14 A. Yes.

15 Q. What does that term mean?

16 A. Front company is a company used to hide --

17 MR. WEINGARTEN: Excuse me. Respectfully, Judge,
18 that's beyond the scope, your Honor, and also subject to all --

19 THE COURT: I didn't hear you.

20 MR. WEINGARTEN: This is the subject that was
21 discussed extensively before.

22 THE COURT: Yes.

23 MR. WEINGARTEN: I think we were about to --

24 THE COURT: I think you misremember. So on that
25 second ground, overruled, the first ground which was scope,

K35TSAD5

Kim - Redirect

1 overruled.

2 Q. Mr. Kim, could you please explain to the jury, what does
3 the term "front company" mean?

4 A. Front company is a company used to hide the true identity
5 of the principal or the true parties of the transaction that is
6 conducted through the front company.

7 Q. And is the use of a front company, or as you described it,
8 hiding the identity of a principal, that is headquartered in
9 Iran, does that matter to OFAC?

10 A. Yes.

11 Q. Why?

12 A. That matters to OFAC because that makes -- as I said, if
13 one transaction is to be done, then there are so many
14 participants involved. If one is to go to Iran or one is
15 delivered to Iran, there is so many parties involved. If front
16 company is used, then the parties' effort to be in compliance
17 with the sanctions program get frustrated, get compromised,
18 because the key information that they're looking for as a red
19 flag is hidden.

20 In comparison, if a transaction is to be done, it was
21 planned to be done or trying to be done without mistake, then
22 normally in those situations, from my experience, there's --
23 the key information is there, because nobody wants to
24 intentionally hide those. So if front company is used and
25 looks like it is not even related to transaction, then it goes

K35TSAD5

Kim - Recross

1 through step by step the transaction process. And that process
2 made all the parties involved in violation of the regulation,
3 and also it makes U.S. services or goods going to Iran. That
4 is the ultimate problem of the sanctions program. That's why I
5 said it defeats the purpose of sanctions program. That's why,
6 again, the use of front company matters to OFAC.

7 MS. KIM: Your Honor, just one minute, please.

8 THE COURT: Okay.

9 (Pause)

10 MS. KIM: No further questions.

11 THE COURT: Mr. Weingarten.

12 MR. WEINGARTEN: Just one.

13 THE COURT: Go ahead.

14 RECROSS EXAMINATION

15 BY MR. WEINGARTEN:

16 Q. So it's your understanding the whole point of these front
17 companies in Iran, in your work, is to secretly get the money
18 to the mother ship in Iran, correct?

19 MS. KIM: Objection. What is "mother ship?"

20 Q. Remove mother ship.

21 THE COURT: I'll sustain. Reask it, please, for
22 clarity.

23 Q. So the point of the front company is to secretly get the
24 money into Iran so that you don't see it, correct?

25 A. That's correct, but I -- I need some explanation for that.

K35TSAD5

1 We call those companies front company. If the purpose is not
2 to hide, then we use other term.

3 Q. So if there's no reason to hide, then they're not front
4 companies, right?

5 The front companies are secretly getting that money
6 into Iran, that's their whole point, right?

7 A. Yes.

8 MR. WEINGARTEN: Thank you.

9 THE COURT: Ms. Kim.

10 MS. KIM: Nothing from the government, your Honor.

11 THE COURT: Thank you, Mr. Kim, you are excused.

12 Counsel, I'm going to give the limiting instruction
13 now unless there's any objection to timing.

14 MS. KIM: No objection.

15 THE COURT: No objection. Thank you.

16 Members of the jury, I have a limiting instruction:
17 You have heard testimony about the meaning of the words
18 "inapplicable laws and regulations." That testimony was
19 admitted as relevant to the defendant's state of mind. That is
20 the sole purpose for which you may consider it. As I mentioned
21 in my initial instructions to you, I, as the judge, will
22 instruct you on the law and the meaning of the law, and you
23 will be required to follow my instructions.

24 Thank you. Ms. Kim, you may call your next witness.

25 MR. LYNCH: Your Honor, the government calls Talya

K35TSAD5

Nevins.

While we wait for the witness, if I may, the government offers a stipulation.

THE COURT: Go ahead.

MR. LYNCH: Stipulation 104D, as in David.

THE COURT: Counsel, without objection?

MR. HEBERLIG: No objection.

THE COURT: 104D.

(Government's Exhibit 104D received in evidence)

10 MR. LYNCH: It is hereby stipulated and agreed by and
11 between the United States of America by Geoffrey S. Berman,
12 United States Attorney for the Southern District of New York --
13 and I realize we read this before in prior stipulations, so I
14 will jump ahead to point one, which is Government
15 Exhibits 1401A-T, 1403T, 1405T, 1501T, 1503T, 1503A-T, 1506A-T.
16 1601T, 2032T, 2034T, 2034B-T, 2034C-T, 2090T, 2090A-T, 2149T,
17 2187T, 2237T, 2269A-T, 2269B-T, 2269C-T, 2269D-T, 2269E-T,
18 2269F-T, 2269G-T, 2269H-T, 2271T, 2271A-T, and 2276T consist of
19 true and accurate English translations of the underlying
20 government exhibits.

21 It is further stipulated and agreed that this
22 stipulation may be received in evidence as Government
23 Exhibit 104D at trial.

24 Your Honor, the Government offers Government
25 Exhibit 104D at this time.

K35TSAD5

1 MR. WEINGARTEN: No objection.

2 THE COURT: Thank you, Mr. Lynch, the exhibit and
3 indicated documents are admitted.

4 (Government's Exhibits 104D 1401A-T, 1403T, 1405T,
5 1501T, 1503T, 1503A-T, 1506A-T. 1601T, 2032T, 2034T, 2034B-T,
6 2034C-T, 2090T, 2090A-T, 2149T, 2187T, 2237T, 2269A-T, 2269B-T,
7 2269C-T, 2269D-T, 2269E-T, 2269F-T, 2269G-T, 2269H-T, 2271T,
8 2271A-T, and 2276T received in evidence)

9 MR. LYNCH: For the purposes of this witness, the
10 government offers the following exhibits, 1103, 2002, 2210,
11 2114 and 2114A, 2210, 2237 and 2237T, 2257, 2265, 2265B, 2271,
12 2271T, 2271A and A-T, 2276 and 2276T, 2277, 2297, 2297A and
13 2298.

14 MR. HEBERLIG: Can you repeat the one between 2002 and
15 2210?

16 MR. LYNCH: 2114 and 2114A.

17 MR. WEINGARTEN: And the first one?

18 MR. LYNCH: 1103.

19 MR. HEBERLIG: Your Honor, we have objections to two
20 of those exhibits.

21 THE COURT: Which two?

22 MR. HEBERLIG: 1103, and 2271 and 2271A and their
23 related translations.

24 THE COURT: Could you skip those until we break, or
25 until the end?

K35TSAD5

Nevins - Direct

1 MR. LYNCH: Sure. Can you read those off one more
2 time?

3 MR. HEBERLIG: Yes, 1103, 2271, 2271A and their
4 related translations.

5 MR. LYNCH: 1103 and 2271?

6 MR. HEBERLIG: Yes.

7 THE COURT: 2271A.

8 MR. WEINGARTEN: And the translations.

9 THE COURT: Ready to proceed?

10 MR. LYNCH: Yes.

11 TALYA NEVINS,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. LYNCH:

16 MR. LYNCH: Mr. Milione, please publish 2276 and its
17 corresponding translation, 2276T.

18 THE COURT: I should say other than 1103 and 2271 and
19 A, the other documents read by Mr. Lynch are admitted.

20 (Government's Exhibits 2002, 2210, 2114 and 2114A,
21 2210, 2237 and 2237T, 2257, 2265, 2265B, 2276 and 2276T, 2277,
22 2297, 2297A and 2298 received in evidence)

23 MR. LYNCH: If you could highlight the header on
24 2276T, this is an email from ali.sadr@spanrise.com to
25 sadrhashemi@stratusgt.com sent June 21, 2008, forward.

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1 If you go to the body, please, and the lower -- please
2 highlight the entire body, and focusing on the lower email
3 which responding to -- that's an email from
4 sadrhashemi@strtusgt to Ali Sadr at that same address that same
5 date.

6 BY MR. LYNCH:

7 Q. Could you plead read the highlighted text of the first
8 email message, "Hello, Dear Ali."

9 A. Hello, Dear Ali,

10 Why didn't you email me the name of the bank?

11 Q. And may you read the response above that that relates
12 "Hello, Dear Father," and highlighting through to the bottom
13 message.

14 A. Hello, Dear Father,

15 The following bank is on the OFAC list,
16 Europäisch-Iranische Handelsbank DIH, Hamburg, Germany.

17 Sincerely yours, Ali.

18 Q. Thank you.

19 MR. LYNCH: Let's go to the next exhibit, 2277, and
20 highlight the header.

21 This is an email from Rob Klingensmith at an
22 anrcapital.com email address to Ali Sadr at a similar email
23 address sent October 4, 2008.

24 If you could highlight the first two paragraphs of the
25 body.

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1 Q. And Ms. Nevins, if you read the first two paragraphs.

2 A. Late last month the Treasury Department gave special
3 permission to the private American Iranian Council to open an
4 office in Teheran. The office plans to promote educational and
5 cultural exchanges by hosting round table discussions and
6 conferences. The Princeton, New Jersey, based council will
7 join a handful of other think tanks and policy institutes that
8 have similar licenses from the Office of Foreign Assets Control
9 to work in Iran, which is under heavy U.S. sanctions over its
10 nuclear program and support for groups the United States labels
11 terrorist organizations.

12 MR. LYNCH: If you could look to the next document,
13 2002, and highlight the initial header.

14 This is an email thread. The top email is from Bahram
15 Karimi at stratusgt.com to Ali Sadr sent December 18, 2009.

16 Could you please highlight the top email.

17 Q. And if you could read that, Ms. Nevins.

18 A. Salam. I have not received my account number and password
19 yet. Maybe such a trifle amount of money is under sanction,
20 too. I think, at this moment, the information you have sent
21 will be enough. Otherwise, I will inform you. Thanks, Karimi.

22 Q. Thank you.

23 MR. LYNCH: If we could move to the next Exhibit,
24 2205. And could you highlight the header, please.

25 Actually, no, we can move on.

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If we could move on to 2210. If you highlight the header on the top. At the top you have an email from Mustafa Cetinel to Ali Sadr sent August 26, 2010. It appears within the body of this email is another email, and the header information for that is its from metalsac@metalsac.com.tr to M.Cetinel at that address sent on the same day, August 26, 2010.

If you could highlight the body of that email.

Q. And Ms. Nevins, if you could read the first three paragraphs of that email.

A. Related to yesterday's meeting held in Ankara, headed by state undersecretary, have assessed the continuation of business relation with Iran under U.S. embargo. However, it is clear that Turkish state owned, and including private banks, have connections with Iranian banks, have been seriously warned to cease money transfers to their Iranian counterparts. Otherwise, United States will enforce sanctions against them. In addition to the sanctions threat, firms that continue relations with Iran risk losing all business connections with the United States.

MR. LYNCH: If you could move to the next exhibit, which is -- we're tabling 1103, which would have been the next exhibit, so we're moving on to 2257. And highlight the letter.

This is from Mustafa Cetinel to Ali Sadr, this time a gmail account. This email is sent October 1st of 2011. And

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1 the subject is swifts are received with thanks.

2 Can you please go to the body and highlight the body
3 of the email.

4 Q. And Ms. Nevins, if you could read the middle -- or the
5 second and third paragraphs, starting "regarding."

6 A. Regarding Mr. Karimi's payment, he checked yesterday and
7 not received yet. If you can furnish me with swift copy I
8 would let him trace in his bank. I'm afraid the money might be
9 blocked in U.S. bank, as they are sensitive to Iranian names.
10 Meanwhile, we will expect to receive \$4.4 million U.S. in ten
11 days from DUCOLSA. We received the addendum signed by them.
12 We will further discuss the details in Istanbul when we see
13 each other.

14 Q. Thank you.

15 MR. LYNCH: We can move to the next exhibit, 2265.
16 Highlight the header. This is an email from
17 pegahsadr@gmail.com to undisclosed recipients with a BCC to
18 alisadr@gmail.com, sent Thursday, February 16, 2002.

19 Please highlight the body. Sorry, 2012. If you
20 highlight the body.

21 Q. And Ms. Nevins, could you read that.

22 A. Please see attached. This applies to U.S. persons and
23 whomever is present in the U.S., regardless of what visa they
24 hold.

25 Q. If you could go to 2265A -- excuse me, B, and what is the

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1 title of this document?

2 A. The Impact of the U.S. Sanctions Against Iran on You.

3 Q. And on the lower right, does it appear to be a publication
4 from a specific organization?

5 A. Yes, the Asian Law Caucus.

6 MR. LYNCH: And if you could go to the body of that
7 and turn to page 2, which is the third page of the document, if
8 you look at the upper left corner you will see pagination.

9 If you turn to page 2 and highlight the top first, and
10 that reads Introduction to Iran Sanctions, and then next, if
11 you could highlight -- the next section is What are Iran
12 Sanctions? Highlight that in the first paragraph, please.

13 Q. Ms. Nevins, please read that.

14 A. What are Iran Sanctions?

15 Sanctions are penalties that one country imposes on
16 another country for foreign policy or national security
17 reasons. For a number of years, the United States has imposed
18 sanctions against Iran, generally on the basis that the Iranian
19 government works against U.S. interests. The most relevant
20 sanctions affecting your commercial and financial dealings with
21 Iran are the Iranian transaction regulations, Iran sanctions.

22 MR. LYNCH: If you highlight the next section, says
23 Who Regulates U.S. Sanctions against Iran.

24 Q. If you read the body of that.

25 A. OFAC. OFAC stands for Office of Foreign Assets Control,

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1 which is an agency of the United States Department of Treasury.
2 Among other things, OFAC is responsible for administering and
3 enforcing the Iran sanctions.

4 MR. LYNCH: And if you could highlight the section on
5 the upper right.

6 Q. And Ms. Nevins, if you could read that whole section.

7 A. What happens if I don't comply with the Iran sanctions?

8 Failure to comply with the Iran sanctions can result
9 in severe criminal and civil consequences. Criminal penalties
10 may include a fine up to one million dollars, imprisonment up
11 to 20 years, or both. Civil penalties may be the greater of up
12 to \$250,000 or twice the amount of the transaction.

13 MR. LYNCH: And now if we go to page 4 within the
14 document, which is Section 3, Money and Investment Matters. If
15 you could highlight the section, "How do I know?"

16 Q. Ms. Nevins, if you could read the title and the body of
17 that.

18 A. How do I know what properties or entities are owned or
19 controlled by the government of Iran?

20 OFAC publishes a list of persons determined to be the
21 government of Iran as part of its specially designated
22 nationals list. The list, commonly known as the SDN list, is
23 available in a number of formats on OFAC's website.

24 THE WITNESS: Should I read --

25 MR. LYNCH: Indicating a web address after that at the

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1 treasury department.

2 If you pull out and highlight the following section
3 below it, "What is generally allowed," and highlight the first
4 bullet for me.

5 Q. If you could read that.

6 A. What is generally allowed?

7 U.S. banks are allowed to handle funds transfers to
8 and from Iran through third country banks for the following
9 transactions: A non-commercial family remittance. This means
10 you are allowed to send and receive money to and from your
11 family as long it is not for a commercial transaction or
12 related to a family-owned business.

13 MR. LYNCH: And pull out and highlight the next
14 paragraph, "In practice."

15 Q. And Ms. Nevins, if you could read the first full sentence.

16 A. In practice, funds transfers between U.S. and Iran that do
17 not violate the Iran sanctions are few and far between because
18 most transactions with Iran are prohibited, and almost all
19 Iranian banks are on the SDN list.

20 MR. LYNCH: Pull out, and highlight just the next
21 bullet and point header.

22 A. Payment associated with one of the import or export
23 exceptions. See Sections 4 and 5 of this publication for a
24 detailed discussion of these exceptions.

25 MR. LYNCH: And I apologize, if you could highlight

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1 that bullet with the bullets below. Sorry, if you keep the
2 header.

3 Q. And read the second and third bullets, please.

4 A. Travel-related payments, such as payment of living
5 expenses, payment for accompanied baggage and goods and
6 services acquired for personal use, and payment for travel
7 arrangements, air and sea, land.

8 Payment for the shipment of donation of articles,
9 food, clothes, medicine, to relieve human suffering.

10 MR. LYNCH: And if you could pull out and highlight
11 the final two bullets on the page that all fall under, again,
12 the general heading of what is generally allowed.

13 A. Any transaction authorized by OFAC through a specific or
14 general license. Payments to Iran associated with the
15 overflight of Iran or emergency landing in Iran.

16 Q. The heading is fine on that.

17 MR. LYNCH: If we go to skip ahead a few pages to page
18 10 in the internal document, Section 5, export prohibitions, if
19 you highlight the whole body of the upper half of that page.

20 Q. If you could read "You are generally," that sentence, and
21 then after that the first bullet below.

22 A. You are generally prohibited --

23 Q. If you could read the header above it, please.

24 A. How do the Iran sanctions affect the export of goods and
25 services to Iran from the United States?

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1 You are generally prohibited from the following
2 transactions: Exporting goods, technology, and services to
3 Iran.

4 Q. And then if you could read the third and fourth bullets.

5 A. Exporting goods, technology, or services from the United
6 States to a third country, for example, UAE, if you know or
7 have reason to know that such items are intended for shipment
8 or exportation, directly or indirectly, to Iran.

9 Exporting goods, technology or services from the
10 United States to a third country, for example, Germany, if you
11 know or have reason to know that such items are intended for
12 production, for commingling with, or incorporation into goods,
13 technology or services, which will then be exported directly or
14 indirectly to Iran.

15 Q. If you could read the final paragraph, please.

16 A. These export prohibitions include direct exports U.S. to
17 Iran, exports through a third country, U.S. to third country to
18 Iran, and exportations for transshipment U.S. to Iran to third
19 country. Also note that the prohibition against technology
20 exports generally extends to software.

21 MR. LYNCH: Let's go to the next page, page 11, if you
22 highlight just maybe the left-hand side.

23 Q. I will have you read a few things on this side, just the
24 top bold portion, please.

25 A. Are there any exceptions to the export prohibitions?

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1 Q. Would you read the bolded bulleted points, but not the
2 text.

3 A. Gifts exception, accompanied baggage and personal use
4 exception, household goods exception.

5 MR. LYNCH: You could pull out, and same thing on the
6 second side of the page, right side of the page, highlight all
7 that.

8 Q. If you could read the bulleted bolded lines that again fall
9 under: Are there any exceptions to the export prohibitions?

10 A. Information exception, humanitarian donation exception,
11 licensed agricultural and medical commodities exception,
12 license needed.

13 MR. LYNCH: If we could go to page 17 internally
14 within the document, which is Section 7, OFAC licensing, and
15 highlight the top paragraph, please.

16 Q. If you could read that.

17 A. What is an OFAC license?

18 A license is an authorization from OFAC to engage in a
19 transaction that otherwise would be prohibited. In other
20 words, any export, import or transaction involving Iran that is
21 not covered by an exception is prohibited unless you have a
22 license from OFAC. There are two types of licenses, general
23 licenses and specific licenses.

24 Q. And we could go to the next document, 2114.

25 MR. WEINGARTEN: Your Honor, we ask that a limiting

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1 instruction be read at this time.

2 THE COURT: Without objection?

3 MR. KROUSE: No objection.

4 THE COURT: I'm going to remind you, ladies and
5 gentlemen, of the limiting instruction as it pertains to this
6 evidence.

7 You've heard testimony and evidence about the meaning
8 of words in the applicable law and regulations, and that
9 evidence is admitted as relevant to the defendant's state of
10 mind, and that is the sole purpose for which you may consider
11 it. As I mentioned in my initial instructions to you, I, as
12 the judge, I will instruct you on the law and the meaning of
13 the law, and you will be required to follow my instructions.

14 Thank you.

15 MR. LYNCH: Mr. Milione, please turn back to 2265 and
16 highlight the entire -- this is the email to which the document
17 I just read was attached. And again, this is an email from
18 February 16, 2012, subject OFAC sanctions on Iran, description
19 from Pegah Sadr to undisclosed recipients with a BCC to
20 alisadr@gmail.com.

21 And go to the next exhibit, 2114, the header, this is
22 an email from Volz Oliver or Oliver Volz, as indicated in the
23 email address, to Ali Sadr at the gmail account, it was sent on
24 Monday, March 12 of 2002, subject return of USD 45,000. If you
25 please highlight the body of that email.

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1 Q. And Ms. Nevins, if you could read that body.

2 A. Dear Ali,

3 Unfortunately, we have received the money back,
4 referring to the payment of USD 45,000 to Lafttiz Shipping FZE.
5 After all, UBS Stanford would return us USD 44,980 minus fee.
6 They rejected this payment due to the Iranian transaction
7 regulations. See attachment. Up to now, they have also not
8 reacted on our request for receiving their compliance
9 reports/lists. I'm sorry to provide such bad news.

10 Best regards, Oliver.

11 MR. LYNCH: If you pull out on the top it indicates
12 the subject is return of \$45,000 and indicates there's an
13 attachment.

14 If we go to 2114A, the attached document, and
15 highlight the full text of the message. Thank you.

16 At the top it indicates incoming message, output from
17 swift, and go down and highlight line 32 across the page, 32A
18 across the page, 58A across the page and below it. Then the
19 whole section, 72 across and below.

20 If I may, your Honor, take the liberties, this is a
21 little -- the structure is a little different, if I may read
22 this one, 32A: value date currency code, 10 February 2012, USD
23 44,980, 58A beneficiary institution, indicates HypoSwiss
24 private bank, Zurich, 72 sender to sever information, and it
25 reads a few lines down after some coded language: Rejected by

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1 UBSWU33, please reject this payment pursuant to the Iranian
2 transaction regulation less charges.

3 We're tabling 2271 for the time being, so please jump
4 to 2297.

5 (Continued on next page)

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Nevins - Direct

1 Q. The header of this is an e-mail of July 3, 2014 from Linet
2 Estiroti to Ali Sadr, forward payment USD 6,000 dollars.

3 This is a document the jury has seen before, but there
4 is an attachment this time. But to remind the jury I will have
5 you read from -- if you could highlight the body of the e-mail
6 from the top, down to "best."

7 If you could read first the bottom e-mail "Dear
8 Linet."

9 A. "Dear Linet,

10 "I hope you are well.

11 "I'm writing to inform you that the payment in the
12 amount of USD 6,000 in favor of Farshid Kazerani, apparently
13 the payment has been rejected by the intermediary bank.

14 "Please find enclosed the official swift message we
15 have received from the intermediary bank."

16 Q. That is it. If you could just highlight the top e-mail in
17 response.

18 A. "Mr. Ali.

19 "The intermediary bank has rejected the payment to
20 Mr. Kazerani. The reason is the U.S. sanctions to pay Iranian
21 institution/individual.

22 "Please advise what to do.

23 "Regards,

24 "Linet Estiroti."

25 MR. LYNCH: If you could go to 2297A, which is the

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1 attached document referenced what is called a swift message.
2 If you could highlight the middle section, No. 2, and on the
3 right-hand side this indicates a date of July 1, 2014, a bank
4 code beneath that and bank name JPMorgan Chase Bank NA, New
5 York, New York. And above that it indicates this is an
6 incoming message. If you could then pull out and highlight the
7 text in Section 4.

8 Q. Ms. Nevins, if you could read what is called the narrative
9 underneath line 79.

10 A. "Regarding your payment order, dated July 1, 2014 for 6,000
11 U.S. dollars, please be advised that, in accordance with the
12 United States Treasury Department and OFAC regulations,
13 transactions involving Iran are restricted. Payment involving
14 an Iranian institution, entity and/or individual not conforming
15 to the guidelines established by the Office of Foreign Asset
16 Control will not be executed.

17 "Such payment instructions will be canceled and no
18 action taken on our part. In compliance with the above, we
19 affirm having canceled your payment instructions. Your account
20 has not been debited in compliance with OFAC regulations. We
21 confirm transaction was rejected and reported to the Office of
22 Foreign Asset Control. We consider this matter resolved and
23 case closed.

24 "Regards, USD wire investigations.

25 "Our reference" --

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1 Q. That's fine Ms. Nevins. Thanks. There is a code beneath
2 it and J.P. Morgan.

3 MR. LYNCH: If you could go to 2298?

4 MR. HEBERLIG: Your Honor, this may have been admitted
5 through Mr. Kazerani.

6 MR. LYNCH: It is the next e-mail. It is very quick
7 just in response to that to complete the narrative on the
8 e-mail batch.

9 MR. HEBERLIG: It came in through a fact witness.

10 THE COURT: Yes. Sustained.

11 MR. LYNCH: We have nothing further for Ms. Nevins.
12 We do have the two documents to --

13 THE COURT: All right.

14 Members of the jury, since we took lunch earlier and
15 started back earlier, we have been going about the stretch of
16 time before our break, and your snacks are here. So Mr. Scott
17 will take you back for a 15-minute break.

18 Thank you.

19 (Continued on next page)

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Nevins - Direct

1 (Jury not present)

2 THE COURT: You may be seated.

3 OK. I have now been just handed up 1103 and 2271 and
4 2271A.

5 1103, objection?

6 MR. HEBERLIG: Relevance and 403, your Honor. This is
7 appears to be a news story about UN sanctions. It is not about
8 the U.S. sanctions. There's been ample evidence that was just
9 read in that these sanctions are actually relevant in this
10 case. U.S. sanctions are not among them, so it is a relevance
11 issue and 403.

12 THE COURT: Mr. Lynch.

13 MR. LYNCH: One moment.

14 MR. KROUSE: Your Honor, we have been looking at it
15 during Mr. Lynch's direct. We can address this. This was
16 covered in our motions *in limine*. The Court has already ruled
17 that it is admissible, this type of document.

18 The government provided the list yesterday, and heard
19 no indication from defense that they had any objections to this
20 document, but --

21 THE COURT: I get that, but just --

22 MR. KROUSE: This area was covered in the motions *in*
23 *limine* and it was admitted.

24 THE COURT: I don't recall this particular document.

25 What's the relevance?

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1 MS. LAKE: Your Honor, if I may just briefly.

2 THE COURT: Third lawyer.

3 MS. LAKE: Sorry.

4 THE COURT: Always a tell.

5 MS. LAKE: It is just because I think I prepared this
6 for --

7 THE COURT: I appreciate it.

8 Go ahead, Ms. Lake.

9 MS. LAKE: It is my recollection that the Court ruled
10 that e-mails that the defendant received about sanctions, even
11 other than U.S. sanctions, were relevant because they went to
12 his knowledge of sanctions generally, showed that sanctions
13 were a topic that was discussed, that these were things that he
14 received, and it was probative of the argument that the
15 government would make that he was aware of the sanctions at
16 issue in this case.

17 So that was the Court's ruling, that although we
18 didn't include this as one of the specific examples in the
19 motions, it is our view that the Court's ruling on the broader
20 category of documents would encompass a document of this kind.

21 THE COURT: OK. Thank you for the refreshing my
22 recollection.

23 So, in that category, Mr. Heberlig --

24 MR. HEBERLIG: We maintain our objection. It is a
25 newspaper article about UN sanctions.

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1 THE COURT: That he received?

2 MR. HEBERLIG: Yes.

3 There has been ample evidence that he received
4 information about the U.S. sanctions. This imposes a
5 different, confusing concept that the jury has no need to
6 learn.

7 THE COURT: How much of this type of material are we
8 talking about?

9 MS. LAKE: This is it.

10 This is the section. We just went through the
11 documents that in our view go to his knowledge of sanctions, so
12 this is it.

13 THE COURT: Just 1103?

14 MS. LAKE: Yes.

15 THE COURT: From this you are going to argue general
16 knowledge of sanctions.

17 MS. LAKE: Ware going to argue that sanctions were an
18 issue, right. Sanctions generally were a problem for the
19 company. They were talking about sanctions. He was on e-mails
20 talking about how sanctions got in the way of them doing
21 business, and it's relevant to this broader theme that
22 sanctions are something that, when you are part of an Iranian
23 company and you're doing international business, they're going
24 to come up and you're going to know about them.

25 THE COURT: All right. Overruled.

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1 2271. Objection?

2 MR. HEBERLIG: The objection is what's purported to
3 the attachment to the e-mail was not attached to the e-mail,
4 2271.

5 THE COURT: That's not good.

6 MR. HEBERLIG: Pardon me?

7 THE COURT: That's not good.

8 MR. HEBERLIG: 2271 is responsive message from
9 Mr. Sadr saying, why am I copied on this. It is possible,
10 although not apparent and certainly not clear that the
11 attachment was attached to the first e-mail, but I don't think
12 we can draw that conclusion clearly from what's here. The
13 attachment is identified in 2271 by name.

14 THE COURT: And 2271A is what purports -- what the
15 government believes was attached?

16 MR. HEBERLIG: I think that's the idea. That's their
17 nomenclature. When they number something an A, it's supposed
18 to be an attachment.

19 It is not attached to this e-mail, and it is not clear
20 it is even the attachment to the original e-mail, which has the
21 title on the attachment of document 2013/10/31. The attachment
22 is a letter dated 10/23/2013. I don't think there's sufficient
23 evidence that it is part of this document.

24 MR. KROUSE: This is in evidence, your Honor. The
25 government moved it in with Mr. Kazerani and went through it

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1 with him.

2 THE COURT: 2271A?

3 MR. KROUSE: Yes, both, along with the translations.

4 MR. HEBERLIG: Why are we doing it again?

5 MR. KROUSE: I don't know. It is in evidence.

6 THE COURT: It is in evidence, so we don't need to do
7 it with the paralegal, right?

8 MR. KROUSE: That's correct, your Honor.

9 THE COURT: Anything else.

10 MR. HEBERLIG: Just one issue. I don't know when it's
11 coming up. We were handed over the lunch break some summary
12 chart exhibits that we have not seen previously.

13 We would like the opportunity overnight to review the
14 voluminous exhibits that are cited in them and check on the
15 accuracy of the document. We would object to any testimony
16 this afternoon about the exhibits.

17 THE COURT: Who's doing that?

18 MR. KROUSE: The summary charts that we handed to the
19 defense pertain to, one, payments, just a summary of all the
20 payments that the government has alleged in this case. There's
21 around 15 payments.

22 The second summary chart is the travel chart showing
23 the defendant's travel to and from Iran. I think the travel
24 chart is less of a pressing matter because that's not coming
25 up.

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1 The payments section we may get to today. I actually
2 don't think so. It's possible we'll start it.

3 But there is a section where we will, with a
4 paralegal, walk through the quite voluminous evidence of wire
5 transfers, payment letters, bank accounts.

6 THE COURT: Any reason they shouldn't have tonight to
7 review it.

8 MR. KROUSE: The government has no objection to them
9 having the night to review it. It's a fairly simple chart in
10 the government's view, but overnight is fine. Then we can put
11 it in after the payment section is fully shown to the jury.

12 MR. HEBERLIG: That's fine.

13 THE COURT: We have plenty of material to fill the
14 rest of the time, but the chart, that will be offered tomorrow?

15 MR. KROUSE: Yes.

16 THE COURT: What else?

17 So this paralegal, and then there's another paralegal?

18 MR. KROUSE: I'm about to call one.

19 Your Honor, if I could maybe read the exhibit, we will
20 check. I will confer with defense counsel if there are any
21 objections.

22 THE COURT: That would be great.

23 MR. HEBERLIG: Can I just address that?

24 We did get a long list of exhibits last night. The
25 person who was just on was identified as the third paralegal

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1 who would be called today. I guess the order switched. I
2 anticipated raising this on a break. At 2 in the morning I
3 didn't seem productive to send a list over.

4 THE COURT: I appreciate it, and at least this time,
5 Mr. Heberlig, I didn't give you a hard time.

6 MR. HEBERLIG: Right.

7 THE COURT: I do appreciate that and recognize the
8 difficulties. There's only so many hours in the day, but all
9 we can do is try.

10 Anything else?

11 MR. KROUSE: Your Honor, this doesn't need to happen
12 now, but the government is going to seek to admit Government
13 Exhibit 502 in as a public record. The government has provided
14 this exhibit to the defense I believe on February 14. We don't
15 need to introduce it today, but I think with respect to the
16 defense's arguments last night that a Treasury Department
17 federal banking agency fact sheet should be admissible as a
18 public record that sets out that agency's activities under
19 Federal Rule of Evidence 803(8), the government believes that
20 Government Exhibit 502 which is a FinCen U.S. Department of
21 Treasury advisory concerning St. Kitts and Nevis' citizenship
22 by investment program similarly falls under that exception and
23 should be admitted as well. So the government will offer it,
24 but we don't have to do that today.

25 MR. HEBERLIG: We object for multiple reasons.

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Nevins - Direct

1 Number one, this was discussed in the Jencks material
2 with the witness who was on the stand a couple of days ago
3 maybe yesterday. The government decided to withdraw it and not
4 offer it.

5 Had they done so through her, it would have been
6 subject to rigorous cross-examination by us. They chose not
7 to. It is highly prejudicial under Rule 403. It came in, it
8 was published by the agency May 20, 2014.

9 The information in here is completely different than
10 the facts of our case. A point of the advisory is that someone
11 with an SKN passport could evade sanctions because individuals
12 with whom they were dealing would not know their Iranian
13 identity.

14 The facts of this case are fundamentally different.
15 The face of Mr. Sadr's passport, unlike apparently some other
16 SKN passports, identifies his place of birth as Iran. So any
17 bank compliance officer or other person who was using his
18 identity document to establish an account or form a business
19 would have full information that he was an Iranian citizen,
20 number one.

21 The evidence has also shown that not only did he
22 provide his SKN passport to his bank, the bank that is at issue
23 in this case, HypoSwiss, but he provided his Iranian passport,
24 which was the e-mail that was kept out for now where the bank
25 officer replied, "Terrific, you made my day."

K36nsad6

Nevins - Direct

1 That is highly prejudicial, and it's a sandbag that
2 they didn't put this in through the relevant witness yesterday
3 or a few days ago.

4 MR. KROUSE: It is not a sandbag. The government told
5 them. We marked this three weeks ago and gave it to the
6 defense. We never intended to introduce it through that
7 witness. We never showed it to her. She was testifying about
8 the program in general.

9 THE COURT: Why was it in their Jencks?

10 MR. HEBERLIG: It was on our Jencks.

11 MR. KROUSE: Because she mentioned it in one of her
12 interviews.

13 MR. HEBERLIG: They wrote in their letter to the Court
14 that they were not going to offer evidence about this when we
15 were fighting about what the Treasury Department witness would
16 testify about.

17 MR. KROUSE: The defense is more than welcome to call
18 a witness during their case to talk about why this isn't
19 applicable, but that doesn't mean it's not admissible.

20 THE COURT: Why is it applicable?

21 MR. KROUSE: It is relevant because it is a same
22 argument the defense was making about why Treasury Department
23 public fact sheets were relevant to show the defendant's state
24 of mind.

25 This is relevant to show that passports obtained using

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Nevins - Direct

1 the St. Kitts and Nevis citizenship by investment program were
2 known by FinCen to pose a risk of financial crime as relevant
3 to show --

4 THE COURT: What about the point that it is in the
5 context of where Iran is not identified as the place of origin?

6 MR. KROUSE: I don't believe it says that anywhere,
7 but if defense counsel will show me that.

8 MR. HEBERLIG: On page 2, under the guidance, it says
9 Financial institutions should conduct risk-based customer due
10 diligence to mitigate the risk that a customer is disguising
11 his or her identity with an SKN passport in order to evade
12 sanctions or engage in other financial crime. This due
13 diligence may include verifying a customers' identity using a
14 form of government-issued identification other than or in
15 addition to the SKN passport, so on and so forth, which is
16 exactly what this bank did and exactly what he produced.

17 The SKN passport itself represents on its face that he
18 is Iranian. There are other passports apparently that this
19 addresses where the individual's place of birth is not
20 represented.

21 That is not the facts of this case. In any event --

22 MR. KROUSE: I don't think --

23 MR. HEBERLIG: If I may finish please --

24 MR. KROUSE: Sorry.

25 MR. HEBERLIG: There was extensive pretrial litigation

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1 in connection with the Dubowitz matter about offering evidence
2 that a bunch of other people committed crimes using facts that
3 are somewhat tangentially related to this case to argue to the
4 jury that the defendant did too. It is highly improper and it
5 should be excluded.

6 THE COURT: Just on that last point, what I said is
7 there is a line, and I'm concerned about this area, and I would
8 take them as they come. So in that form you're raising the
9 objection --

10 MR. HEBERLIG: Absolutely.

11 THE COURT: OK. Mr. Krouse.

12 MR. KROUSE: Your Honor, we distinguished those cases.
13 Those cases are situations where the government is arguing,
14 putting on an expert witness who says this is what people in
15 Washington --

16 THE COURT: I am aware of the cases.

17 I didn't categorically exclude it, but there is a line
18 and potential for a problem here. So we'll get to that in a
19 moment.

20 Start with the contention, the significance of Iran
21 being clear on the face of Mr. Sadr's SKN passports.

22 MR. KROUSE: Thank you, your Honor.

23 I will look again at the passport. It says he was
24 born in Iran. I don't think it's clear from the face of the
25 Iranian passport that he remained an Iranian national.

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1 Just because someone is born in Iran, listed as the
2 place of birth on the passport doesn't mean that you are
3 disclosing that you are an Iranian national when you show your
4 St. Kitts and Nevis passport.

5 We're about to put in a bunch of documents that show
6 in fact when Mr. Sadr was opening these front companies he was
7 listing himself as a national exclusively of St. Kitts and
8 Nevis.

9 So it's not the case that Mr. Sadr was simply
10 obtaining the St. Kitts and Nevis passport but telling
11 everybody I'm both a St. Kitts and Nevis and Iranian citizen.

12 That is not what was happening. He was using the St.
13 Kitts and Nevis passport to explicitly represent to these
14 authorities and these banks that he was a St. Kitts and Nevis
15 citizen.

16 Also, I do take issue -- I don't think what defense
17 counsel read there puts what Mr. Sadr did outside of this
18 advisory. It is not saying that this is only an issue because
19 of people who get St. Kitts and Nevis passport and don't
20 disclose that they are Iranian citizens. It's saying that this
21 citizenship by investment program is being used to facilitate
22 financial crime.

23 THE COURT: What will you argue to the jury from this?

24 MR. KROUSE: Your Honor, in the opening the government
25 laid out the five steps that we allege Mr. Sadr engaged in to

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Nevins - Direct

1 hide his transactions.

2 THE COURT: Right. And you will talk about the
3 passport.

4 MR. KROUSE: We will talk about the passport.

5 THE COURT: What will you argue to the jury from this?

6 MR. KROUSE: We will argue a point that wouldn't be
7 immediately obvious to them, which is that a citizenship by
8 investment program like the St. Kitts and Nevis one is one that
9 can be used to hide a person's nationality.

10 The defense on cross-examination tried to
11 cross-examine the witness by saying doesn't the United States
12 do the exact same thing. I think it's fair for the government
13 to introduce evidence that this isn't an S1 visa situation,
14 where you have to put in investment, live in the United States
15 for eight years, learn English, take a citizenship test, etc.

16 This is a situation where you pay money to St. Kitts
17 and Nevis, it says \$400,000 or \$250,000 and you obtain a
18 citizenship essentially a couple of months later. There's lax
19 oversight. There's lax information about that citizenship.
20 The defense.

21 MR. HEBERLIG: All of that is in through Ms. Ebanks.
22 What he just said, every bit of it came in through her
23 testimony.

24 MR. KROUSE: I don't believe Ms. Ebanks spoke to
25 FinCen's financing.

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1 MR. HEBERLIG: She spoke to controls.

2 THE COURT: You can't talk on top of each other.

3 Go ahead.

4 MR. KROUSE: She didn't speak about FinCen's findings.

5 To the extent that this is an exception to the hearsay rule,
6 the same rule that the defense cited to the Court earlier, the
7 government is entitled to utilize that same exception and offer
8 this evidence of a public record from the United States
9 Treasury Department setting forth an advisory on the threat of
10 St. Kitts and Nevis citizenships being used to facilitate
11 financial crimes.

12 MR. HEBERLIG: Just because it may have a hearsay
13 exception doesn't mean that the other rules of evidence don't
14 apply, 403 and the like.

15 THE COURT: Maybe you didn't make a hearsay objection.

16 MR. HEBERLIG: I am not making a hearsay objection.

17 THE COURT: I didn't think so, but that is not the
18 question.

19 MR. HEBERLIG: Counsel's said because it is a public
20 record it comes in.

21 THE COURT: Obviously not.

22 MR. HEBERLIG: That is not the case. It's also dated
23 May 20, 2014. That is after the conspiracy. All of the
24 payments were done by November of 2013. I mean, this is
25 completely irrelevant, and the prejudice can't be overstated.

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1 It is within the charged -- may I please finish.

2 MR. KROUSE: I'm sorry. I thought you were.

3 MR. HEBERLIG: I wasn't.

4 MR. KROUSE: That is why I said sorry.

5 THE COURT: Stop talking on top of each other. I
6 can't say it enough. It's unhelpful and frustrating.

7 Go ahead.

8 MR. HEBERLIG: That other Iranian nationals were
9 abusing this program in other ways is not relevant evidence for
10 this trial, especially when the facts are different from them.

11 THE COURT: And --

12 MR. HEBERLIG: I'm sorry.

13 THE COURT: The testimony you said overlapped with
14 Ebanks was what?

15 MR. HEBERLIG: She testified to exactly how you obtain
16 a St. Kitts and Nevis passport. You pay money. You didn't
17 have to visit, there wasn't an interview, all of those.

18 Then she was also permitted, through leading questions
19 we discussed with the Court, to testify that the controls for
20 obtaining a St. Kitts and Nevis passport were lax.

21 THE COURT: OK.

22 MR. HEBERLIG: The only additional thing they want is
23 that FinCen declared that a bunch of other Iranians were
24 misusing the program.

25 MR. KROUSE: Your Honor --

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1 THE COURT: Last point.

2 MR. KROUSE: Yes, your Honor.

3 The government, as we said, we are not offering it
4 today. We are happy to supplement with a letter now that we
5 understand the defense is not making a hearsay objection and
6 directly focus on the relevance and 403 issues.

7 One proposal would be to redact certain parts of the
8 advisory to make the points that are the most relevant and
9 least prejudicial. For instance, we could redact.

10 THE COURT: You are going to do it tonight anyway, so
11 I will take a proposal in that regard. But I've got the
12 defendant's objections firmly in mind.

13 MR. KROUSE: Understood.

14 Thank you, your Honor.

15 THE COURT: Anything else?

16 Just quick bathroom break and we will return. Five
17 minutes, please.

18 (Recess)

19 THE COURT: All right. Ready to proceed?

20 MR. KROUSE: Yes, your Honor.

21 THE COURT: Bring the witness back up.

22 Mr. Lynch, are you finished with direct?

23 MR. KROUSE: I believe that witness was finished. I
24 didn't know if the defense --

25 MR. LYNCH: There were two more exhibits. One of the

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1 ones the objection was overruled, but I think we will just
2 incorporate them.

3 MR. HEBERLIG: And cross?

4 THE COURT: They haven't done cross.

5 MR. LYNCH: OK. Then I will finish with these two.

6 THE COURT: What do you mean two?

7 MR. LYNCH: I'm sorry. There are two documents.

8 One I neglected to read. One we did argument.

9 THE COURT: One --

10 MR. LYNCH: It was on the list, 2237.

11 THE COURT: All right.

12 (Witness resumed)

13 (Continued on next page)

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Nevins - Direct

1 (Jury present)

2 THE COURT: Thanks, everyone. You may take your
3 seats. Everyone may be seated.

4 MR. LYNCH: May I, your Honor?

5 THE COURT: Mr. Lynch, you may proceed.

6 MR. LYNCH: We just have two more documents.

7 If you could please publish 1103. If you could
8 highlight the header.

9 This is from Mustafa Cetinel to B. Karimi at two
10 addresses and a couple other individuals and copying a series
11 of individuals Zangeneh.

12 THE COURT: Just a moment.

13 JUROR: Sorry. It is on.

14 THE COURT: Go ahead.

15 MR. LYNCH: Sorry.

16 This is dated May 4, 2011. If you could highlight the
17 body of the e-mail but not the attached information just yet.
18 The body of the actual e-mail message. I'm sorry. What's
19 above that? The e-mail content.

20 BY MR. LYNCH:

21 Q. If you could read that, Ms. Nevins.

22 A. "Dear All Concerned.

23 "This news is from one year ago. It is not new. In
24 spite of this, we exported several goods for Vavan project
25 "Thanks and regards,

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Nevins - Direct

1 "Mustafa Cetinel."

2 MR. LYNCH: If you would highlight the body below to
3 what it's referring to. If you could highlight from on
4 Wednesday to 10 lines down. Perfect.

5 This reads, On Wednesday, I believe that's May 4,
6 2011, M. Reza SH Moayed at Stratus GC sent the following
7 information.

8 Q. If you could read the first roughly ten lines to the
9 sentence that reads "in late June."

10 Once you finish that sentence I'll ask you to stop.
11 Thank you.

12 A. "Transactions with Iran-based banks and private companies
13 have nearly come to a halt since a delegation from the United
14 States met with Turkish banks and institutions in August to
15 discuss UN sanctions passed in June Daily Milliyet reported
16 Saturday. The delegation came from the U.S. to Turkey around
17 two weeks ago to warn banks and private companies not to do
18 business with Iranian companies, Milliyet reported.

19 "The visit came in the wake of a fourth round of
20 sanctions approved June 9 by the UN Security Council against
21 Iran for its nuclear programs. In late June, the U.S. and the
22 EU imposed their own stricter sanctions and asked other
23 countries to do so as well."

24 MR. LYNCH: Thank you. And then the final document
25 will be Exhibit 2237. Can we publish that, please. Highlight

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1 the header. This is an e-mail from Mustafa Cetinel to
2 sadr@samanehstratus.com sent on December 18, 2010 and copy Ali
3 Sadr. If you could please highlight the full body of that top
4 e-mail.

5 Q. If you could read that, please, Ms. Nevins.

6 A. "Dear Mr. Soltani,

7 "Here below, please find the letter received from
8 Albaraka Bank and its exact translation made by Mr. Celal
9 Tatlikibasi. It seems that there is no possibility to work
10 with the mentioned bank as I was expecting.

11 "Thanks and regards

12 "Mustafa Cetinel.

13 "Quote.

14 "Dear Mustafa,

15 "Please find below the reply of Albaraka Turk in
16 response to our follow-up inquiry related to a possible
17 cooperation as discussed during the meeting at their offices.
18 Their message is 'We regret to inform you that, because of the
19 present policy of our bank, we are unable to render any
20 services to any direct or indirect transaction originating from
21 or associated with Iran.'

22 "Best regards.

23 "Celal Tatlikibasi."

24 MR. LYNCH: Tough name. Thanks. Nothing further.

25 THE COURT: Mr. Heberlig, cross-examination.

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Nevins - Cross

1 MR. HEBERLIG: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. HEBERLIG:

4 MR. HEBERLIG: May I proceed?

5 THE COURT: You may.

6 BY MR. HEBERLIG:

7 Q. I have questions only on one of those documents. It's
8 Government Exhibit 2265 and 2265A.

9 Do you remember this document? You were asked some
10 questions about it February 16, 2012 e-mail from Pegah Sadr.

11 Do you know that to be Ali Sadr's sister --

12 A. No. I don't know the --

13 Q. -- to a bunch of undisclosed recipients with a BCC to Ali
14 Sadr and there is an attachment. It's the attachment I just
15 want to ask you a couple of questions about.

16 A. Sure.

17 MR. HEBERLIG: 2265B, please. Can we go to page 2.
18 Highlight the bottom paragraph, please. Thank you.

19 Q. Can you just read that for a moment?

20 A. "Asian Law Caucus is increasingly receiving inquiries from
21 community members regarding the Iran sanctions. This Know Your
22 Rights publication aims to provide a general discussion of the
23 Iran sanctions, the scope of the prohibited and allowed
24 transactions under the Iran sanctions and the serious impact
25 the Iran sanctions pose on people's lives, especially United

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Nevins - Cross

1 States citizens and residents of Iranian descent.

2 "This publication should not be regarded as legal
3 advice."

4 MR. HEBERLIG: All right. Can we go to page 6,
5 please. Can you just make the whole text larger, but you don't
6 need the heading. What's printed on down.

7 Q. This was the page you were asked some questions about. Do
8 you remember that?

9 A. Yes.

10 Q. Under "what is generally allowed," do you notice that after
11 a number of the sentences there are footnotes, for instance,
12 after noncommercial family remittance there's footnote 10.

13 Do you see that?

14 A. Yes.

15 MR. LYNCH: Objection, your Honor, she may be asked to
16 read, but I am not sure what --

17 MR. HEBERLIG: I am asking her to identify that there
18 are footnotes, your Honor.

19 THE COURT: Overruled.

20 Q. On the right-hand side do you see that other sentences, in
21 particular under the payment associated with the with one of
22 the import or export exceptions was 13, 14, 15 and 16.

23 Do you see that?

24 A. Yes.

25 Q. Can we turn to page 23, please. OK. We just identified

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Nevins - Cross

1 10, 13, 14, 15, 16 and 17. Can we highlight footnote 10,
2 please. Just 10 first.

3 Can you read that, please?

4 A. 31 C.F.R. Section 560.516(a)(2).

5 Q. Thank you. Can we look at footnote 13. Actually, why
6 don't you highlight on down to 16.

7 A. 31 C.F.R. Section 560.210 --

8 Q. I'm sorry to interrupt you. Maybe there is a shortcut. Do
9 you see on the right-hand side of footnotes 13, 14, 15, and the
10 entirety of footnote 16 that there is a citation to 31 C.F.R.
11 560.516(a)(3) and (a)(1)?

12 A. Yes.

13 Q. Can we go to page 22, please. Can I ask you, I don't need
14 the whole thing, just the first sentence, please.

15 A. "Whether U.S. economic sanctions such as the Iran
16 sanctions, are an effective tool of American foreign policy
17 remains a matter of longstanding debate and is outside the
18 scope of this publication."

19 Q. Just one more.

20 A. "However, there is little dispute that the Iran sanctions
21 can have both intended and collateral effects."

22 MR. HEBERLIG: Thank you.

23 THE COURT: Mr. Lynch.

24 Anything further?

25 MR. LYNCH: No. Thank you.

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Nelson - Direct

1 THE COURT: Thank you, Ms. Nevins.

2 You are excused.

3 (Witness excused)

4 THE COURT: The government may call its next witness.

5 MR. KROUSE: Thank you, your Honor, Matthew Nelson.

6 THE COURT: Mr. Nelson may come up.

7 MR. KROUSE: Your Honor, the government at this time
8 can offer, while the witness is going to the stand, Government
9 Exhibits 2005, 2005A, 2016, 2016A, 2016C, 2016F, 2065, 2065A,
10 2071, 2071A, 2071B, 2187, 2187-T, 2188, 2190, 2198, 2199, 2201,
11 2201A, 2215, 2215A, 2215A-T, 2215B, 2215B-T, 2215C, 2215C-T,
12 2217, 2219, 2219A through M.

13 MR. HEBERLIG: No objection.

14 THE COURT: Thank you. Let's swear the witness, and I
15 will admit those at that point.

16 MATTHEW NELSON,

17 recalled as a witness by the Government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. KROUSE:

21 Q. Good afternoon, Mr. Nelson.

22 A. Good afternoon.

23 THE COURT: And the exhibits read by Mr. Krouse are
24 admitted.

25 (Government Exhibits 2005, 2005A, 2016, 2016A, 2016C,

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1 2016F, 2065, 2065A, 2071, 2071A, 2071B, 2187, 2187-T, 2188,
2 2190, 2198, 2199, 2201, 2201A, 2215, 2215A, 2215A-T, 2215B,
3 2215B-T, 2215C, 2215C-T, 2217, 2219, 2219A through M received
4 in evidence)

5 THE COURT: You may proceed.

6 MR. KROUSE: Mr. Milione, Government Exhibit 2187,
7 please. If you could zoom into the header.

8 This is an e-mail sent February 25, 2010, subject
9 forward, forward, Clarity Trade & Finance SA. (In formation)
10 from Mo Sadrha, sadrhas@gmail.com to Ali Sadr, with two
11 attachments, one Clarity Trade & Finance SAOFRC confirmation
12 and another Clarity Trade & Finance SA UBS fax.

13 You can zoom out of that, please.

14 If you could zoom into the bottom e-mail. This is an
15 e-mail chain. The bottom e-mail, thank you, including the
16 header.

17 Thank you.

18 This is from Reza Ebadi to Mo Sadrha, Clarity Trade &
19 Finance SA (in formation).

20 "Dear Mr. Sadr,

21 "Good morning."

22 If you go to the second page. Zoom in to the top of
23 that. No, sorry to the first half. Excuse me.

24 "I have the pleasure to inform you that the name your
25 Swiss company approved by central commercial registrar of

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1 Switzerland in Bern. Please refer to the attachmant. Based on
2 the above confirmation, I hoped a temporary account with UBS
3 for Clarity Trade & Finance SA."

4 The details are "Bank UBS SA Geneva, Switzerland.
5 Various information.

6 "Reference Clarity Trade.

7 "I would very much appreciate if you kindly have the
8 capital of your company be transferred to the above account.

9 As I already informed you, the minimum capital for
10 creation of this type of company is CFH 100,000. However, it
11 is advisable to create and register the company with more
12 capital. The creation and registration costs" -- and the costs
13 are listed.

14 "I would like to suggest to you to add this amount to
15 the amount of capital of your choice that you will be
16 transferring to the above account."

17 And then if you could zoom out of that.

18 And for 6, if you could highlight that which has some
19 bolded language.

20 "As the purpose of the company I would suggest,
21 portfolio management, research and advising on investment
22 projects, participation in projects, also commercial,
23 financial, banking and real estates operations, purchase and
24 sales of all sorts of products, management consultancy as well
25 as execution of the mandates received from clients according to

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1 all of the prevailing rules and regulations related to above
2 activities."

3 You can zoom out of that.

4 Go back to page 1, please.

5 And then zoom into the middle e-mail, including the
6 header.

7 Thank you.

8 All the way down through the signature.

9 This is from Reza Ebadi to Mo Sadr.

10 "Dear Mr. Sadr,

11 "Good afternoon.

12 "Further to my e-mail of this morning below, I have
13 the pleasure of sending you the fax of UBS concerning Clarity's
14 temporary account."

15 You can zoom out of that.

16 The top e-mail is in a foreign language.

17 If you could pull up Government Exhibit 2187-T, which
18 is the translation and zoom into the from the top through that
19 top e-mail.

20 Thank you.

21 It says,

22 "From Mo Sadrha to Ali Sadr, February 25, 2010.

23 "Hi, Ali.

24 "Read carefully.

25 "Just now, we want to wire money for the registration

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1 of the company in Switzerland. We have to do it very fast.
2 Tell me what you to do so that no one can withdraw the money
3 and that it will be used only for deposit of the company's
4 capital and no one can withdraw except for ourselves."

5 Mr. Milione, Government Exhibit 914, which is in
6 evidence, please. If you could zoom into the name and the
7 e-mail address.

8 And the Google subscriber information part. Sorry.
9 Where it says above -- no, where it says above Google
10 subscriber information.

11 Thank you.

12 Google subscriber information, name Mo Sadrha, e-mail
13 sadrhas@gmail.com, SMS No. 989122160999.

14 You can zoom out of that.

15 If you could now pull up Government Exhibit 2187.

16 If you could zoom into the header, please.

17 Sorry, wrong one. 2188.

18 Now, if you could zoom into the bottom e-mail first.

19 This is another e-mail chain.

20 This is from Ali Sadr, on behalf of Ali Sadr sent
21 dimanche to Mo Sadrha, CC Reza Ebadi, re Clarity Trade &
22 Finance AS.

23 Mr. Nelson could you read the e-mail here, the text.

24 A. "Dear Mr. Ebadi.

25 "It was nice talking to you on the phone. I'll be

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1 sending a copy of my passport shortly. I'll be also looking
2 forward to receiving your e-mail to Mr. Federik Zumbach from
3 UBS to introduce me as one of the beneficiaries of the company
4 and tell him to be expecting a call from me in order to make
5 the process more transparent.

6 "Best regards,

7 "Ali Sadr."

8 MR. KROUSE: Thank you. If you could zoom into the
9 top e-mail from the header down to the name, to kindest
10 regards. Thank you. This is a response from Reza Ebadi to Ali
11 Sadr, the same date.

12 Q. And Mr. Nelson if you could read the body e-mail, please.

13 A. "Dear Mr. Sadr.

14 "Good morning. I was pleased talking with you today.

15 "As agreed, I have the pleasure of sending you:

16 "1. Business card Mr. Federik Zumbach, our account
17 executive at business banking department of UBS - Geneva.

18 "2. UBS fax concerning the details of Clarity Trade &
19 Finance SA information, temporary AC and 3.

20 "Domain names that I have reserved so far"

21 "CTF-SA.com.

22 "Clarity trade.com.

23 "Clarity Trade-finance.com.

24 "Clarity-TF.com.

25 "Clarity TF.com.

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1 "I will send Mr. Zumbach an e-mail, copy to you,
2 informing him that you will be contacting him to discuss about
3 Clarity's temporary account."

4 MR. KROUSE: That is fine there.

5 Mr. Milione, could you zoom in to the bottom e-mail
6 which starts the way at the bottom.

7 It says, "Dear Mr. Ebadi.

8 If you go to the second page.

9 This is from the sadrhas@gmail.com.

10 Q. Could you read that e-mail?

11 A. "Thank you for the progress.

12 "I've discussed the matter with my son, Ali, who is
13 also copied on this e-mail, and he'll contact you to further
14 instruct for transferring of the required funds accordingly.
15 You can also reach him via his mobile at 1-301-254-0455.

16 "Regards."

17 MR. KROUSE: Government Exhibit 2190.

18 If you could zoom into the header and the full e-mail,
19 please. Thank you.

20 This is an e-mail Tuesday, March 2, 2010, re follow-up
21 from Ali Sadr to frederick.zumbach@ubs.com.

22 If you could read the e-mail, Mr. Nelson?

23 A. "Dear Mr. Zumbach.

24 "It was a pleasure talking to you the other day on the
25 phone. As mentioned on the phone, I would like to make sure

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Nelson - Direct

1 that the funds transferred to the temporary account are well
2 protected and are nonaccessible by any third party, including
3 the registered agents or existing directors, and these funds
4 are not moved to any permanent account without my or my father
5 consents with written authorizations and signatory form
6 approvals.

7 "Once we are personally present and are identified by
8 the bank, then we could move forward in releasing the funds
9 into a permanent account with well-defined protections and
10 limitations on each signatory person.

11 "Thus, as we agreed on the phone, I would very much
12 like to receive an e-mail from you stating these protective
13 steps and procedures.

14 "On the service fees that we talked about, please
15 provide me with two fee structures:

16 "1. Based on an initial capital of \$500,000.

17 "2. Based on an initial capital of \$1 million.

18 "Best regards,

19 "Ali Sadr."

20 MR. KROUSE: Government Exhibit 2065, please.

21 This is an e-mail chain. If you could just zoom into
22 the whole document.

23 The bottom e-mail of this is from Ali Sadr to
24 nassarhomapour@yahoo.com, July 31, 2011 Clarity Trade &
25 Finance.

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1 "Dear Mr. Homapour,

2 "Hope all's well. It was pleasure seeing you again
3 yesterday. Please find attached the requested information on
4 Clarity. Should you need more information, please let me know.

5 "Best regards.

6 "Ali Sadr."

7 And then that e-mail is sent and says, "Print the
8 attached files."

9 It's sent from Ali Sadr to
10 internal@samanehstratus.com.

11 And there are two attachments there. Government
12 Exhibit 2065A is an attachment to that e-mail.

13 Put that up. Thank you.

14 If you could zoom into the first half of this
15 document. Thank you.

16 This is Clarity Trade & Finance SA.

17 Q. Mr. Nelson, could you read the first line company name.

18 A. Clarity Trade & Finance SA.

19 Q. Registered office?

20 A. Geneva.

21 Q. Date of memorandum and articles of association?

22 A. March 16, 2010.

23 Q. And then the purpose, please.

24 A. "Wealth management; research and advice on investments; the
25 acquisition of interests in companies and all commercial and

K36nsad6

Nelson - Direct

1 financial operations and operations involving real and moveable
2 property within the limits permitted by the relevant
3 legislation, notably the LFAIE, law on the acquisition of real
4 estate by persons abroad; trading in all products; all types of
5 management consultancy and execution of all instruction on
6 behalf of its clients.

7 MR. KROUSE: Government Exhibit 2198.

8 This is another e-mail chain. If you could go to page
9 2 to get the first e-mail. Zoom in from the middle of the
10 page. There. Just capture that e-mail, please.

11 Thank you.

12 On July 15, 2010, HBM funds, Alwin de Jongh,
13 alwyndejongh@hbmgroup.com writes.

14 Q. Mr. Nelson can you read it.

15 A. "Dear Ali.

16 "As we are still awaiting to receive the three
17 below-mentioned documents, Mr. Marynberg from MV has requested
18 us to supply him with details about your real estate project in
19 Venezuela which is being financed with the bolivars exchanged.
20 Mr. Marynberg would like to know the name of the project, the
21 name of your company running and financing the project, and the
22 names of the principals (company directors and shareholders).
23 I assume Pinnacle Investments SA is the company running the
24 project -- is it not?

25 "Looking forward to hearing from you.

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Nelson - Direct

1 "Kind regards.

2 "Alwin F. De Jhong."

3 (Continued on next page)

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1 MR. KROUSE: And Mr. Milione, if you go to page 1 to
2 capture the response, which is goes across two pages starting
3 the middle to the bottom, please.

4 This is the response from Ali Sadr to Alwin De Jhong
5 from HBM Funds, and Herman Oosten, July 16, 2010, subject
6 conference call with Mercantil Valores Uruguay.

7 Q. Mr. Nelson, could you read the response.

8 A. Dear Alwin,

9 It is the government of Venezuela that pays and
10 finances the project. We are only acting as the construction
11 company who is performing the job, so we USD/EUR outside in a
12 Swiss bank, then through the process of exchange we would have
13 to pay for the day-to-day operations of the project in
14 bolivars, such as salaries, payrolls, materials, local heavy
15 machines and equipment, et cetera.

16 If MV is concerned about the source of the funds, I
17 can provide him with an IPC from the government of Venezuela
18 which shows: 1, the name and location of the project; 2, the
19 total dollar/bolivar amount of the project; 3, the company
20 performing the construction, which is IIHC, and IIHC has six
21 shareholders who then are some of our international companies,
22 and the ultimate shareholder of those entities is my family. I
23 have no intention of disclosing/providing all such
24 documentations to MV or anyone else for that matter.

25 More importantly, based on our contract with the

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Nelson - Direct

1 government of the Venezuela, we cannot share that information
2 with the third parties unless with banks and financial
3 institutions for which we would have to disclose their names to
4 the government and seek their approval in advance. I'm sure MV
5 wouldn't like to be reported to the government of Venezuela and
6 seek their approval for such exchange process.

7 This is why we have created a second company in
8 Venezuela by the name of Pinnacle that has a contract/mandate
9 with IIHC to run its financing and take care of its financial
10 management since we can't disclose much about IIHC and its
11 contract with the government of Venezuela.

12 All MV needs to be concerned about is that it's
13 dealing with two legitimate and established entities, 1,
14 Clarity Trade & Finance SA of Switzerland; and 2, Pinnacle
15 Investments SA of Venezuela with cleared shareholders; and 3,
16 the source of funds USD/EUR, which is the government of the
17 Venezuela.

18 The questions that relate to who's performing the
19 construction, who owns those contractor/subcontractor
20 companies, what's the progress of the project, where's the
21 project, and such should not be anyone's business since it
22 shall create significant problem for that company since it's
23 under strict rules set forth by the Venezuela government.
24 However, due to the confidence I have in your organization,
25 Herman and yourself, I attached our latest IPC to this email.

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1 This IPC is not to be disclosed to any MV for any
2 reason, that it's only for use to verify and report the finding
3 to MV if needed. Please use your highest level of discretion
4 regarding this information. This is well beyond what we should
5 disclose on the matter. Let me know if you would like to have
6 a phone call on this.

7 Thanks, as always.

8 Q. Then back to page 1, this is the last email on this
9 particular chain, from the header down, the response from Alwin
10 De Jhong, also dated July 16, 2010.

11 If you could read the text.

12 A. Dear Ali,

13 Thank you for your detailed explanation on the matter.
14 We will inform Mr. Marynberg. Please note the IPC document
15 provided will not be communicated to anyone. Awaiting to
16 receive from you the outstanding account opening documentation.
17 Awaiting to receive from MV/Mr. Marynberg opinion letter on the
18 legality of the exchange process promised next week. Feedback
19 and confirmation of how to go about the two companies involved.

20 Enjoy your weekend, Ali. Alwin F. De Jhong.

21 Q. Government Exhibit 2199, same date, email chain July 16,
22 2010, if you could do the middle email first, same date from
23 the same person, Alwin De Jhong to Ali Sadr.

24 If you could read that.

25 A. Dear Ali,

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1 We have provided MV with your explanation of the
2 project and parties involved, and apparently there are still
3 some concerns in these initial stages of the process.

4 Herman just informed me that he has a company document
5 for IIHC on file which we can forward to MV with your
6 permission. However, how would you like to respond to the
7 concerns raised below? You are probably the best person to do
8 so. Please note that these are normal type of compliance and
9 KYC issues that a financial institution like MV needs to
10 address. Looking forward to hearing from you.

11 Kind regards, Alwin F. De Jhong.

12 MR. KROUSE: This references concerns below. If you
13 go to page 2 and zoom in for the Alwin -- that email right
14 there.

15 Q. Mr. Nelson, could you read that.

16 A. Alwin, thank you for your detailed response. The issue not
17 that the government of Venezuela is the source of funds, it is
18 that we are dealing with an Iranian-owned entity which may or
19 not be subject to certain sanctions around the world. What is
20 the jurisdiction of formation/domicile of IIHC? Please confirm
21 where Mr. Sadr himself is based.

22 Q. Back to page 1, Ali Sadr's response from the top to the
23 middle, same day, Ali Sadr to the same people from HVN group.
24 If you could read the email.

25 A. Dear Alwin,

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1 No one is dealing with Iranian entity. The clients
2 are 1, Clarity Trade and Finance, which is domiciled in
3 Switzerland with a non-Iranian shareholder, 2, Pinnacle
4 Investments SA, domiciled in Venezuela with non-Iranian
5 shareholders.

6 The issue of Iranian concern should be completely out
7 of the picture. Why do you think all these entities are set up
8 in different countries with no Iranian connections? I'm sure
9 it's now clear that MV's client/customer is no shape or form an
10 Iranian entity or shareholder.

11 Finally, IIHC is completely irrelevant to this whole
12 process. A legitimate Swiss company wants to exchange USDs to
13 Bs to a Venezuelan entity. I only brought up IIHC to prove the
14 source of funds and nothing else.

15 Hope this helps, thanks.

16 MR. KROUSE: Government Exhibit 2201. July 30, 2010,
17 Calarity account from Ali Sadr to Mo Sadr.

18 Q. Mr. Nelson, could you read that email.

19 A. Salam, Papa,

20 Please find attached a copy of Calarity's USD and EUR
21 accounts in order to ship our deposit routes, so please arrange
22 for the letter.

23 Love, Ali.

24 MR. KROUSE: There's an attachment, 2201A. If you
25 could zoom into the top half down through the name of the bank.

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Nelson - Direct

1 Q. If you could read from the top.

2 A. Instructions for fund transfer in USD in favor of client at
3 Hyposwiss Private Bank Limited, Zurich.

4 MR. KROUSE: Below it says to via JP Morgan Chase
5 Bank, New York, it has a few codes, for the account of bank of
6 beneficiary, it says Hyposwiss Private Bank in Zurich,
7 Switzerland and has a few codes.

8 If you could zoom out of that and then go zoom into
9 the bottom part in favor of beneficiary, name Clarity Trade and
10 Finance, again there's an account number there.

11 2215. This is an email is sent October 28, 2010,
12 Stratus documents, from Ali Sadr to Urs Schneider. There's
13 some attachments.

14 Q. Mr. Nelson, if you could read the email.

15 A. Dear Urs,

16 Regarding our company in Turkey, please find attached
17 update of all the registration and incorporation documents.
18 Also, you might need the below information as well, the name on
19 the bank account, Stratus International JS joint stock,
20 registration number of Stratus is 751671, office address is
21 Gardenya Plaza 5, K3, D3, Atasehir, Istanbul, Turkey. I shall
22 be the sole signatory on the account for now until I add my
23 father and sister later on. I've promised them that we shall
24 have the account numbers sometime mid next week. I would very
25 much appreciate it if we could live up to my promise.

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Nelson - Direct

1 Thanks, as always, Ali.

2 Q. Thank you. There's three attachments, Government
3 Exhibit 2215A, which is in Turkish, then 2215A-T, which is the
4 translation.

5 MR. KROUSE: Could you put them side by side, page 1,
6 if you zoom on the article section one, incorporation, where it
7 says "Founders," all the way down.

8 Q. If you could just read the names and nationalities -- name,
9 nationality and address?

10 A. 1. Sayed Mohammad Sadr Hashemi Nejad, St. Kitts & Nevis,
11 Caribbean Isles, 2705 Dubai Marina Heights Tower, Dubai, UAE.

12 2. Sayed Ali Sadr Hashemi Nejad, St. Kitts & Nevis,
13 Caribbean Isles, 2705 Dubai Marina Heights Tower, Dubai, UAE.

14 3. Abbas Taheri Gharagozlou, St. Kitts & Nevis,
15 Caribbean Isles, 2705 Dubai Marina Heights Tower, Dubai, UAE.

16 4. Negarin Ali Sadr Hashemi Nejad, St. Kitts & Nevis,
17 Caribbean Isles, 2705 Dubai Marina Heights Tower, Dubai, UAE.

18 MR. KROUSE: The last two you don't have to read the
19 address, it's Mustafa Cetinel in Turkey and Ekrem Cinar in
20 Turkey.

21 Page 4, please. If you could zoom into before it says
22 the division of the shares among the company's shareholders.

23 It says Sayed Mohammad Sadr Hashemi Nejad, number of
24 shares, 150,000 shares, 30 percent; Sayed Ali Sadr Hashemi
25 Nejad, 150,000 shares, 30 percent; Negarin Sadat Sadr Hashemi

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Nelson - Direct

1 Nejad, 150,000 shares, 30 percent; Abbas Taheri Gharagozlou,
2 25,000 shares, 5 percent; Mustafa Cetinel, 20,000 shares, 4
3 percent; Ekrem Cinar 5,000 shares, one percent.

4 Page 6, please. If you could zoom into where it says
5 the following persons are chosen to the members of the board of
6 directors: Sayed Mohammad Sadr Hashemi Nejad, the Dubai
7 address, nationality St. Kitts & Nevis, Caribbean Isles; Abbas
8 Taheri Gharagozlou, same address in Dubai, St. Kitts & Nevis,
9 Caribbean Isles; Mustafa Cetinel, an address in Turkey,
10 nationality Turkey; Sayed Ali Sadr Hashemi Nejad, same address
11 in Dubai, St. Kitts & Nevis, Caribbean Isles; Ekrem Cinar, an
12 address in Turkey, Turkey.

13 Number 9, please. And this indicates shareholders,
14 the six named earlier, and the signatures in the original.

15 Government Exhibit 2215B, which is the second
16 attachment, also in Turkish. Sorry, 2215B and BT next to each
17 other. If you could zoom in to the top half.

18 Chamber of Commerce Certificate of Activity, registry
19 number.

20 Q. Could you read the company name there?

21 A. Stratus International Contracting.

22 Q. And then it has -- (reading Turkish)

23 THE COURT: You have got it, it says on the page.
24 Sorry to the court reporter, but it's in Turkish. It's
25 document number 2215B. We'll move on.

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Nelson - Direct

1 MR. KROUSE: And then the last exhibit, 2215C and CT,
2 which is in, and this states the registry certificate and the
3 date of registration, October 22nd, 2010, for that same company
4 name.

5 2217, please. And this is an email chain, if you zoom
6 in from the top, through the blue email.

7 This from Urs Schneider, the middle email, to Ali
8 Sadr.

9 Dear Ali,

10 I have received the information from our compliance
11 partners and it needed to have the company documents in the
12 home language and a translation version in English.

13 And then there's the top email from Ali Sadr to Leyla
14 Estir and Uri Schneider.

15 Q. Could you read that email.

16 A. Dear Linet,

17 Please find below the requested information and
18 apostled and translated documents that need to be prepared
19 ASAP. This has the highest priority in our schedule right now.
20 Please keep me posted on the progress and get this started now.

21 Best regards.

22 Q. Government Exhibit 2219, the top portion. And this is
23 November 2nd, 2010, an email from Leyla Estir to Tevs Nevin
24 copying Ali Sadr. If you could read that.

25 A. Mrs. Nevin,

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Nelson - Direct

1 Please find attached copies of the necessary documents
2 for opening an account for Stratus in English and apostled.

3 The DHLAWB is attached. I guess you'll receive them tomorrow.
4 For any questions, please do not hesitate to contact me.

5 Best regards, Linet Estiroti.

6 MR. KROUSE: Attached are several documents.

7 2219B. This is the trade registry certificate for
8 that company.

9 2219M. The names of the shareholders.

10 2219J. This is the distribution of the shares.

11 2219H. These are the members of the board of
12 directors, including their addresses and stated nationalities,

13 2219E. These are, again, the legal provisions and the
14 names of the shareholders.

15 Government Exhibit 2005. This is an email, if you
16 zoom in. It's from February 18, 2010, it says from Ali Sadr to
17 Luis Rivera, the body says: Thanks, and there's an attachment.

18 If you open the attachment to 2005A, please.

19 This is a share certificate which states capital
20 \$10,000 Stratus Global Investments LTV, St. Christopher &
21 Nevis, 5,000 shares. This is to certify that Sayed Mohammad
22 Sadr Hashemi Nejad at an address in St. Kitts, is a registered
23 proprietor of 5,000 shares, and signed it's by Sayed Mohammad
24 Sadr Hashemi Nejad and Luis Rivera. So that's the first page
25 of that exhibit.

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Nelson - Direct

1 Second page, same certificate, St. Christopher &
2 Nevis, this one is to certify Sayed Ali Sadr Hashemi Nejad at
3 St. Kitts address, 5,000 shares, signed by Sayed Ali Sadr
4 Hashemi Nejad and Luis Rivera.

5 And then the last page, third page.

6 THE COURT: Mr. Krouse, how much longer?

7 MR. KROUSE: About ten minutes, your Honor.

8 THE COURT: Okay.

9 MR. KROUSE: This is a certificate of notary public.

10 Q. Can you read what was included in this package that the
11 notary public verified to be true?

12 A. Certificate of incorporation, statutory statement,
13 memorandum and articles of association, appointment of the
14 directors, transfer of subscription rights, general power of
15 attorney, share certificate in the name of Ali Sadr.

16 Q. So the last one is share certificate in the name of Ali
17 Sadr, correct?

18 A. Yes.

19 Q. If you go back to the email, 2005, what is the title of the
20 subject of the email?

21 A. Please take the first page off.

22 Q. And then 2005A, what is the first page of that exhibit?

23 A. Certificate of shares.

24 Q. For which person?

25 A. Sayed Mohammad Sadr Hashemi Nejad.

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Nelson - Direct

1 MR. KROUSE: Government Exhibit 2271. This is an
2 email, if you could zoom into the whole thing. Wednesday,
3 September 28, 2011, subject finance management contract between
4 Stratus International JS and Stratus Global, and the dividends
5 distribution from Stratus Global to Mr. Mohammad from Linet
6 Estiroti to Urs Schneider CC Sayed Ali Sadr Hashemi Nejad.

7 Q. Can you read the e-mail?

8 A. Dear Mr. Schneider,

9 Please find attached the contract of Stratus
10 International versus Stratus Global and the dividend
11 distribution from Stratus Global to Mr. Mohammad Sadr.

12 Best regards, Linet Estiroti.

13 MR. KROUSE: There's two attachments there, Government
14 Exhibit 2071A. There's a longish financial contract here.
15 I'll just point out the top portion, please, the date, 14th day
16 of January 2010, it's between Stratus International Contracting
17 JS and Stratus Global Investments LTD represented by Mr. Ali
18 Sadr Hashemi Nejad, and he's referred to as the administrator.

19 The bottom of the page. The administrator is a legal
20 person constituted under the private laws of the Federation of
21 St. Christopher & Nevis under the regime of legal liability
22 company that is dedicated to providing wealth and financial
23 investment services and general consulting to the company and
24 its hereafter announced subsidiaries and partners.

25 You can go to the third page of that exhibit, please.

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Nelson - Direct

1 Q. Could you read the first sentence of that?

2 A. The parties agree that, as compensation for the services
3 rendered, the administrator shall receive a service fee of
4 equivalent of USD \$1,000,000 payable annually starting from
5 July 31, 2011 from the account of the company managed by the
6 administrator.

7 MR. KROUSE: If you go to the last page, 4, and that's
8 signed at the bottom by two people, one says the company
9 Stratus International Contracting JS, one is Stratus Global
10 Investments LTD, one has a Turkish name, one is Ali Sadr
11 Hashemi Nejad.

12 2071B, which is the second attachment, I'll read the
13 date, September 1st, 2011, subject chairman Mr. SM Sadr Hashemi
14 Nejad, compensation payout 2010 to 2011 to the treasury of
15 Stratus Global Investments LTD.

16 Could you zoom in to "Dear sir."

17 Q. And read that.

18 A. Dear sir,

19 Please find below the declaration of Mr. S. Mohammad
20 Sadr Hashemi's full compensation package until the end of
21 fiscal year 2011 ending on December 31, 2011. The amounts
22 cited below are payable and due upon availability of the
23 relevant funds: Board member chairman signing bonus, GBP
24 1,000,000 million. 2010 chairmanship option dividend payout,
25 March through December, GBP 300,000. 2011 chairmanship option

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Nelson - Direct

1 dividends payout, January through December, GBP 400,000. 2010
2 performance bonus, GBP zero. 2011 performance bonus GBP
3 300,000. Total, 2 million GBP.

4 Please note that by any partial payments the total
5 above amount shall be closed out before the fiscal year 2011.

6 Q. That's signed by Ali Sadr, correct?

7 A. Yes.

8 Q. 2016.

9 THE COURT: Wrapping up, Mr. Krouse?

10 MR. KROUSE: This is the last email, then a couple of
11 attachments.

12 THE COURT: Quickly.

13 MR. KROUSE: Yes, your Honor.

14 Zoom into to the bottom email of this chain, please.

15 Ali Sadr, Urs Schneider, Tevs Nevin, transfer request
16 and Nevin's passport copy.

17 Dear Urs, Nevin,

18 Please find attached another wire transfer request for
19 today's value date, please also find a copy of Tev Nevin's
20 passport. Best regards, Ali.

21 There are several attachments, the top emails from Ali
22 Sadr attaching a bunch of things which we won't all go through.
23 Please print all the attached files in colors.

24 2016A, and zoom into the top half. This is HypoSwiss
25 Private Bank, authorized signature for legal entities Stratus

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1 Global Investments LTD, country St. Kitts & Nevis, signatory
2 one, Sayed Ali Sadr Hashemi Nejad, date of birth there,
3 St. Kitts & Nevis nationality. Negarin Sadat Sadr Hashemi
4 Nejad, date of birth there, nationality St. Kitts & Nevis.

5 2016C. First half. Hyposwiss Private Bank and
6 authorized signatures for different legal entity, Clarity Trade
7 and Finance SA. Signatory one, Sayed Ali Sadr Hashemi Nejad,
8 nationality St. Kitts & Nevis. Negarin Sadat Sadr Hashemi
9 Nejad, nationality St. Kitts & Nevis.

10 Last one, 2016F. First half. Hyposwiss Private Bank,
11 Stratus International Contracting JS, which has an Istanbul,
12 Turkey address. Signatory one, Sayed Ali Sadr Hashemi Nejad,
13 nationality St. Kitts & Nevis. Negarin Sadat Sadr Hashemi
14 Nejad, also nationality St. Kitts & Nevis.

15 No further questions, your Honor.

16 THE COURT: All right. Mr. Heberlig?

17 MR. HEBERLIG: No cross, your Honor.

18 THE COURT: Thank you, you may step down.

19 Next witness.

20 MS. LAKE: Your Honor, the government calls Matthew
21 Blair.

22 THE COURT: Ms. Lake, do you want to read the
23 documents?

24 MS. LAKE: This is not a document, but I have a
25 stipulation.

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1 THE COURT: Counsel, without objection, 103?

2 MR. HEBERLIG: No objection.

3 THE COURT: Thank you.

4 (Government's Exhibit 103 received in evidence)

5 MS. LAKE: It is hereby stipulated and agreed by the
6 parties that Government Exhibits 401 through 406 are true and
7 accurate copies of business records maintained by JP Morgan
8 Chase Bank.

9 Government Exhibit 410 is a true and accurate copy of
10 a business record maintained by Commerzbank.

11 Government Exhibits 421 through 431 are true and
12 accurate copies of business records maintained by Citibank.

13 Government Exhibits 440 and 441 are true and accurate
14 copies of business records maintained by UBS.

15 Government Exhibit 450 through 455 and their subparts
16 are true and accurate copies of business records maintained by
17 Wells Fargo.

18 Government Exhibit 460 and its subparts are true and
19 accurate copies of business records maintained by Equity Title
20 Company.

21 Government Exhibit 470 and its subparts are true and
22 accurate copies of business records maintained by the United
23 States Federal Reserve.

24 Government Exhibit 480 and its subparts and true and
25 accurate copies of business records maintained by Fidelity

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1 National Title Company.

2 Government Exhibit 409 and its subparts are true and
3 accurate copies of business records maintained by Malibu Escrow
4 Corporation.

5 The original records for Government Exhibits 401
6 through 490 and their subparts were made at or near the time by
7 or from information transmitted by a person with knowledge of
8 the matters set forth in the records. They were kept in the
9 course of regularly conducted business activity, and it was the
10 regular practice of that business activity to make the records.

11 It is further stipulated and agreed that this
12 stipulation may be received in evidence as Government
13 Exhibit 103 at trial.

14 At this time the government offers Government
15 Exhibit 103 and Government Exhibits 401 through 406.

16 THE COURT: Thank you. Without objection.

17 MR. HEBERLIG: No objection.

18 THE COURT: They're admitted.

19 (Government's Exhibits 103, 401 through 406 received
20 in evidence)

21 (Continued on next page)

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Blair - Direct

1 MATTHEW JORDAN BLAIR,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. LAKE:

6 Q. Good afternoon. Where do you work?

7 A. I work at JP Morgan Chase.

8 Q. When did you join JP Morgan Chase?

9 A. In 2011.

10 Q. What your current title?

11 A. I'm a vice president.

12 Q. How long have you been a vice president at JP Morgan?

13 A. About three years.

14 Q. At a very high level, what kind of work do you do at JP
15 Morgan?

16 A. I'm operations manager in the transactions sanctions
17 screening utility.

18 Q. Is the transaction screening sanctions utility part of a
19 broader group within the bank?

20 A. It is.

21 Q. What is that broader group?

22 A. It falls within the global sanctions compliance teams.

23 Q. How long have you worked in sanctions compliance at JP
24 Morgan?

25 A. Since 2011.

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Blair - Direct

1 Q. Can you provide an overview of what kind of bank JP Morgan
2 is?

3 A. JP Morgan is an investment bank, is it's a commercial bank,
4 it's a retail bank, provides services to domestic clients in
5 the United States and international clients across the world.

6 Q. What country is JP Morgan based in?

7 A. The United States.

8 Q. Are the deposits of JP Morgan insured?

9 A. They are.

10 Q. Who insures the deposits of JP Morgan?

11 A. The Federal Deposit Insurance Corporation.

12 Q. Do you have an estimate of how many U.S. dollar
13 transactions JP Morgan processes on a daily basis?

14 A. Approximately 2 million.

15 Q. Are you familiar with wire transfers?

16 A. I am familiar with wire transfers.

17 Q. What is a wire transfer?

18 A. A wire transfer is a means of transferring -- making a U.S.
19 dollar payment.

20 Q. And can people in different countries wire money to one
21 another?

22 A. They can.

23 Q. Are you familiar with the term "correspondent banking?"

24 A. I am familiar with the term "correspondent banking."

25 Q. What is correspondent banking?

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Blair - Direct

1 A. Correspondent banking refers to the relationship that banks
2 have with each other making them able to service clients in
3 other domiciles.

4 Q. What are some of the services that correspondent banks
5 provide?

6 A. So if a U.S. business has supplier in Mexico, their bank
7 could make payments to the supplier in Mexico even if they
8 don't have the presence in Mexico if they have a correspondent
9 bank relationship with the Mexican bank. Individually
10 speaking, if a person were to go on a vacation to another
11 county and they needed some banking services, they would be
12 able to get them even if their bank didn't have a presence in
13 that country through a correspondent bank relationship with
14 their bank.

15 Q. Do correspondent banks provide dollar clearing services for
16 banks in foreign countries?

17 A. They may.

18 Q. Does JP Morgan have are correspondent banking relationships
19 with non-U.S. banks?

20 A. It does.

21 Q. What kinds of banks generally clear U.S. dollars?

22 A. U.S. banks or banks with presence in the United States, or
23 non-U.S. banks with correspondent bank relationships with U.S.
24 banks.

25 Q. Can you provide an example of how the money could move if a

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1 bank in Venezuela sent U.S. dollars to a bank in Switzerland?

2 A. If the bank in Venezuela had a correspondent bank
3 relationship with the U.S. bank, and if the bank in Switzerland
4 also had a correspondent bank relationship with the U.S. bank,
5 that U.S. bank could process that payment from Venezuela to
6 Switzerland.

7 Q. Are you familiar with swift messages?

8 A. I am familiar with swift messages.

9 Q. What is a swift message?

10 A. Swift messages are a means of banks communicating with each
11 other. They are used to make payments, to settle commodity
12 trades, security trades, statements, free format messages.

13 There's a number of different types of swift messages.

14 Q. And can you describe just a couple of the different types
15 of swift messages?

16 A. There's an MT103, which is a type of payment; MT202, which
17 is a payment cover letter; an MT545, which is a securities
18 statement; there's an MT346, which is a bullion statement.

19 Q. So the first that you mentioned, the 103 and 202, what do
20 those swift messages do? What are they used for?

21 A. They're used to communicate banks to process a payment.

22 Q. Are you familiar with the term "know your customer?"

23 A. I am familiar with the term "know your customer."

24 Q. What is know your customer?

25 A. Know your customer, known by the acronym KYC, is the

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1 expectation of banks to have information about their clients.

2 Q. Does JP Morgan Chase have a know-your-customer requirement?

3 A. Yes, it does.

4 Q. Why does it have that requirement?

5 A. Because it's a U.S. bank and U.S. banks have a
6 know-your-customer requirement.

7 Q. Does JP Morgan have a know-your-customer requirement when
8 it is serving as the correspondent bank?

9 A. It does not.

10 Q. How does JP Morgan learn information about the parties to a
11 transaction when its acting as the correspondent bank?

12 A. It relies on the information provided by its correspondent
13 banking partner.

14 Q. Is it fair to say that JP Morgan relies on the
15 correspondent bank to do its own KYC?

16 A. Yes.

17 Q. So changing gears, you testified that you're part of the
18 sanctions compliance group at JP Morgan. Generally speaking,
19 what are sanctions?

20 A. Sanctions are legislative and executive actions that carry
21 the force of law that are used to force behavioral change.

22 Q. What obligations does JP Morgan have with respect to
23 sanctions?

24 A. Well, as a U.S. entity, it's obligated to be following the
25 sanctions themselves, and as a U.S. bank payment provider it's

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1 obligated to be ensuring it's not party to any potential
2 sanctions violations.

3 Q. What can happen to JP Morgan if does not adequately screen
4 for sanctions violations?

5 A. It could be subject to regulatory action. It can receive
6 fines from the U.S. regulator, which is OFAC, the Office of
7 Foreign Assets Control. It could be subject to market
8 restrictions by the U.S. regulator. It also can be subject to
9 reputational risk.

10 Q. So you mentioned the Office of Foreign Assets Control. Is
11 that also known as OFAC?

12 A. Yes.

13 Q. What are the types of things that OFAC can do to JP Morgan
14 if it determines that JP Morgan violated sanctions?

15 A. They could impose fines upon JP Morgan. They could
16 restrict their ability to act in a specific market.

17 Q. And are you aware of whether JP Morgan needs to know that
18 it violated sanctions to face regulatory action from OFAC?

19 A. No, JP Morgan does not need to know that it violated
20 sanctions.

21 Q. And are you aware of instances in which OFAC has
22 investigated transactions that JP Morgan approved but which
23 were later flagged for sanctions violations?

24 A. Yes, I am.

25 Q. Can you just describe the circumstances in which that might

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1 happen?

2 A. So if a payment moves to a second bank or a third bank,
3 moves to a downstream party in the sanctions program, if the
4 transaction is found to be in violation of the sanctions, that
5 entity would cease it and block it. JP Morgan would then be
6 notified and would need to explain why it processed payment if
7 there's a potential sanctions violation.

8 Q. How often does that sort of thing happen?

9 A. Couple of times a month.

10 Q. And what exactly does JP Morgan need to do internally when
11 that happens?

12 A. They would need to investigate why the payment was
13 processed. They would need to see was the payment held for
14 sanction review at JP Morgan; if it was, what was the position?
15 If it wasn't held, why wasn't it held, and should it have been?

16 Q. Approximately how many work hours go to each review of this
17 nature?

18 A. At least 20 work hours.

19 Q. For each review?

20 A. For each review.

21 Q. How many people generally work on that sort of review?

22 A. At least one to two people.

23 Q. And when you testified that JP Morgan can face reputational
24 risk if it process transactions that violate sanctions, what
25 did you mean?

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1 A. Reputational risk is the damage to the firm's reputation.
2 If JP Morgan become known as an entity that violates sanctions
3 or does business with entities that violates sanctions, it runs
4 of risk of losing clients or not being able to establish
5 relationships with clients.

6 Q. Are there different kinds of sanctions that affect your
7 work at JP Morgan?

8 A. There are different kinds of sanctions.

9 Q. Are you familiar with country-based sanctions?

10 A. I am.

11 Q. Is that one of the types of sanctions that affects your
12 work?

13 A. Yes, it is.

14 Q. What is a country-based sanction?

15 A. Country-based sanctions enacted by OFAC are comprehensive
16 sanctions programs on a specific country.

17 Q. And what countries are on the country sanctions list?

18 A. Cuba, Iran, Syria, North Korea and Crimea.

19 Q. And what does it mean if a country is subject to country-
20 based sanctions for JP Morgan?

21 A. It's a complete and total restriction on economic activity
22 with them.

23 Q. And has Iran been on this country's sanctions list during
24 your entire time at JP Morgan since 2011?

25 A. It has.

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1 Q. Are you familiar with list-based sanctions?

2 A. I am familiar with list-based sanctions.

3 Q. What is list-based sanction?

4 A. List-based sanctions are sanctions on individuals,
5 companies and vessels and other organizations which are
6 generally somewhat less prohibitive than country sanctions.

7 Q. Is there a name for the individuals or entities subject to
8 sanctions through a list-based program?

9 A. They are known as specially-designated nationals.

10 Q. So you testified earlier that you work in the central
11 sanctions utility, is that right?

12 A. Correct.

13 Q. So what does the central screening -- sorry, the central
14 screening utility, what does the central screening utility do?

15 A. The central screening utility maintains the filter
16 environment that transactions are screened through at JP
17 Morgan. It also performs initial review for payments held in
18 sanctions review. It then escalates those reviews to a senior
19 level for potentially true matches.

20 Q. We'll break down that sanctions screening process, but
21 first, how many people work in the central screening utility?

22 A. About 240.

23 Q. And are there subdivisions within the central screening
24 utility?

25 A. There are subdivisions.

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1 Q. And generally speaking, what is your specific role within
2 the central screening utility?

3 A. I'm the manager of the hit rate management team, which is
4 responsible for the quality of the alerts that are being
5 presented for review, responsible for the sanction list testing
6 team, and I'm responsible for the quality assurance team.

7 Q. So now let's walk through how what I'm going to call the
8 CSU screens for potential sanctions violations. What is the
9 first step in the sanctions screening process?

10 A. So the first step would be with the payment itself, either
11 received at JP Morgan or initiated at JP Morgan. All of the
12 parties and details of the transaction would be sent to the
13 Fircosoft filter, which is the name of the fuzzy piece of
14 artificial intelligence used for sanctions screening. The
15 content of the sanctions list, the names and entities and
16 account numbers that are present on it are then screened for
17 within the transaction data. If there is no alerts found, the
18 transaction continues to be processed. If there is a potential
19 alert found, it falls to sanctions review where it is then
20 reviewed by an operator, it can be released if it's found to be
21 a false positive, or it can be escalated for further
22 investigation for potential matches.

23 Q. So if something is caught in the Fircosoft filter as a
24 potential match, what does that mean? Why would it be a
25 potential match?

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1 A. Because it contained data within it that looked like a
2 sanctioned entity.

3 Q. And if it's flagged as a potential match, what happens
4 next?

5 A. An operator would review it, a person would review it. If
6 it appears to be a false positive, which would be a
7 coincidental match or a match to invalid data or something, it
8 would be released. If it was potentially true, it would then
9 be escalated to a senior team where it would potentially be
10 investigated.

11 Q. And what does that investigation entail?

12 A. It would involve acquiring with remitter of the payment the
13 initiating party of the payment for any information that could
14 be used to clarify the association, which could be a date of
15 birth for an individual, it could be an address, it could be
16 ownership of a company or vessel.

17 Q. And if after the investigation it's determined that there
18 is a true match to something that is in the Fircosoft filter
19 which contains the sanctions list, what happens to the payment?

20 A. The transaction would customarily be blocked, which is the
21 seizing of the funds of the transaction, depositing it into an
22 interest-bearing account, and reporting it to OFAC.

23 Q. And is it also possible for a transaction to be rejected?

24 A. Yes, it is.

25 Q. And what does it mean if a transaction is rejected?

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1 A. Rejected transactions are seized and funds are returned to
2 the remitter, and they are still reported to OFAC.

3 Q. Are you familiar with the term "stripping?"

4 A. I am familiar with the term "stripping."

5 Q. What is stripping?

6 A. Stripping is the removing of sanctioned information or
7 potential references to sanctioned information from a payment
8 with the intention of bypassing a sanctions screening program.

9 Q. Can you provide an example of stripping?

10 A. If I'm trying to send funds to a North Korean general who I
11 know happens to be subject to sanctions, if I remove that name
12 from the transaction and enter a different name that I don't
13 believe is related to sanctions, I then stripped the payment.

14 Q. Does JP Morgan have an anti-money laundering program?

15 A. It does.

16 Q. Are you familiar with that program?

17 A. I am.

18 Q. How are you familiar with it?

19 A. In addition to screening for sanctions, we also screen for
20 the anti-money laundering program in our utility.

21 Q. And is Fircosoft part of that screening as well?

22 A. It is.

23 Q. How does Fircosoft screen for money laundering?

24 A. The same way it screens for sanctions, it screens for and
25 identifies the content of the AML program or the AML list, and

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1 it screens for those names and references within transaction
2 data.

3 Q. And what happens if Fircosoft catches a transaction in its
4 money laundering filter?

5 A. The transaction would be held for review, it would be
6 reviewed by an operator, potentially true matches would be
7 escalated for further investigation. If it was identified as a
8 true match, it would be rejected.

9 Q. And are you aware of whether Iran is one of the terms in
10 the money laundering filter within Fircosoft?

11 A. It is.

12 MS. LAKE: Let's turn to some documents. Can we
13 please publish Government Exhibit 401.

14 Q. Are you familiar with type of document?

15 A. I am.

16 Q. What kind of document is this?

17 A. This is a representation of a swift message.

18 Q. And do you know where the swift message came from? Is it
19 from JP Morgan?

20 A. It is.

21 Q. Can you just briefly remind the jury what a swift message
22 is.

23 A. A swift message is a means of communication between banks.

24 Q. Let's go through some of the fields on here. What is the
25 amount listed at the top?

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1 A. \$20,692,579.48.

2 Q. And what is the date?

3 A. July 5, 2011.

4 Q. And what is the meaning of the data in field 20? What does
5 that correspond to?

6 A. That would qualify as an identifier with the transaction.
7 It would be unique to the specifics transaction.

8 Q. And what does the swift type mean?

9 A. That refers to this being an MT202.

10 Q. What is an MT202 again?

11 A. That's a type of payment, cover letter.

12 Q. And what does sender BIC mean?

13 A. BIC is the Bank Identification Code. It's a unique
14 identifier that banks utilize. The sender BIC in this instance
15 is BESCPPTPL.

16 Q. Does that correspond with some other bank that's not JP
17 Morgan?

18 A. Yes.

19 Q. What is the receiver BIC?

20 A. The receiver here is CHASUS33, which corresponds to JP
21 Morgan's New York XP.

22 Q. Does that mean this wire went through JP Morgan's New York
23 bank?

24 A. It does.

25 Q. Is that a bank here in Manhattan?

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1 A. It is.

2 Q. Does this mean JP Morgan received this swift message?

3 A. Yes, it does.

4 MS. LAKE: Let's look at field 50, which is in the
5 text, and highlight down from there.

6 Q. What is field 50?

7 A. That is the ordering party.

8 Q. Who was the ordering party here?

9 A. Petroleos de Venezuela.

10 Q. And where are they based?

11 A. Venezuela.

12 MS. LAKE: Let's highlight field 59.

13 Q. And what kind of information is found in field 59?

14 A. Field 59 is the beneficiary.

15 Q. Who is the beneficiary here?

16 A. Clarity Trade and Finance SA.

17 Q. Which of these fields does Fircosoft query for sanctions
18 compliance purposes?

19 A. All of them.

20 Q. What would have happened in the sanctions screening process
21 if instead of Clarity Trade and Finance SA, field 59 read
22 Iranian International Housing Company?

23 A. The payment would have stopped for review, it would have
24 been escalated, it would have been investigated, and if it was
25 found to be related to Iranian company it would have been

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1 blocked.

2 Q. So what if the investigation revealed that the Iranian
3 International Housing Company was incorporated in Teheran,
4 Iran?

5 A. The payment would have been blocked.

6 Q. And who, if anyone, would JP Morgan report the payment to?

7 A. OFAC.

8 Q. Do you have an understanding of why JP Morgan reports
9 transactions like this to OFAC?

10 A. Because it is legally required to.

11 Q. And what would JP Morgan do if it learned that this payment
12 to Clarity Trade and Finance was for the benefit of an Iranian
13 company?

14 A. It would have held the payment, it would have reviewed it,
15 it would have investigated it and blocked it.

16 MS. LAKE: Turning to page 2, let's expand the text
17 there.

18 Q. So what is this type of document?

19 A. So this is from JP Morgan's U.S. dollar processor. It's a
20 clarification and expansion on the information from the
21 previous message.

22 Q. So is it fair to say that this is essentially a
23 reformatting of the information contained in the swift message?

24 A. Yes.

25 Q. And based on your review of these documents, is this a

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1 reformatting of the data contained in page 1 of Government
2 Exhibit 401?

3 A. Yes.

4 Q. Is that the case for all of the government exhibits that
5 you expect to go through?

6 A. Yes.

7 Q. Let's turn -- let's turn to the next exhibit, 402.

8 We'll turn to page 2. Let's walk through some of the
9 fields here. What is the instruction date?

10 A. August 11, 2011.

11 Q. And what does that mean?

12 A. That's the date the payment instructions would have been
13 received.

14 Q. And what's the payment date?

15 A. August 11, 2011.

16 Q. And what does that mean?

17 A. That's the date the payment is valued.

18 Q. And what's the transaction amount here?

19 A. \$5,418,765.49.

20 Q. What's the transaction type?

21 A. The transaction type here is BT, which means it's a book
22 transfer, which means it's funds going from one account on JP
23 Morgan's books to another account on JP Morgan's books.

24 Q. Is it possible when it's a book transfer that it means that
25 JP Morgan served as the correspondent bank for both of the

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1 foreign banks involved in the transaction?

2 A. Yes, it does.

3 Q. What is the customer swift ID?

4 A. The customer swift ID here is SHHBCHZZ, which is a
5 reference to the credit party Hyposwiss Private Bank AG.

6 Q. And the sender's ID?

7 A. The sender's ID is a reference to the debit party BIC,
8 which is BESCPTPL.

9 Q. And who is the order party?

10 A. Petroleos de Venezuela.

11 Q. Where is that based?

12 A. Venezuela.

13 Q. Who is the debit party?

14 A. BESSFE.

15 Q. Where is that?

16 A. That's in Lisbon, Portugal.

17 Q. Who is the credit party?

18 A. Hyposwiss Private Bank AG.

19 Q. And the BENE?

20 A. BENE is reference to beneficiary, which is Clarity Trade
21 and Finance SA.

22 Q. So based on this information, who originated the payment?

23 A. Petroleos de Venezuela would have originated the payment.

24 The funds moved from the debit party account 11728748 to the
25 credit party account 11835873.

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1 Q. And on its way is it right that it passed through JP Morgan
2 Chase here in Manhattan?

3 A. Correct.

4 Q. Let's turn to Government Exhibit 403. We'll look at the
5 second page. For this one, what is the payment date?

6 A. October 12, 2011.

7 Q. And the transaction amount?

8 A. \$5,874,779.37.

9 Q. And who is the ordering party?

10 A. TDVSA, Petroleosa.

11 Q. And who is the beneficiary?

12 A. Clarity Trade and Finance.

13 Q. And what's the bank for Clarity Trade and Finance under
14 credit party?

15 A. HypoSwiss Private Bank AG.

16 Q. Let turn to Government Exhibit 404, and look at the second
17 page here as well.

18 What's the date of this payment?

19 A. November 9, 2011.

20 Q. And what is the amount of the transfer request?

21 A. \$12,904,173.50.

22 Q. Who was the order party?

23 A. Petroleos de Venezuela.

24 Q. And who was the beneficiary?

25 A. Clarity Trade and Finance SA.

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1 Q. And what's the credit party's bank information here?

2 A. HypoSwiss Private Bank AG.

3 Q. So where did this transaction originate?

4 A. With Petroleos de Venezuela.

5 Q. Where did it end up?

6 A. Through HypoSwiss Private Bank AG to Clarity Trading.

7 Q. Where did it go on the way?

8 A. It was processed by JP Morgan.

9 Q. Let's publish Government Exhibit 405. We'll stay on the
10 first page this time. What kind of document is this?

11 A. This is also a reference to a swift message.

12 Q. Is this a swift message or a different kind of message?

13 A. So this came through a payment system called CHIPS.

14 Q. What is CHIPS?

15 A. It's another U.S. dollar type of payment system which has a
16 slightly different format.

17 Q. Does it basically do the same thing as swift?

18 A. It does.

19 Q. Looking at the page, who is -- sorry, what is the date of
20 the transaction?

21 A. December 27, 2011.

22 Q. And what's the dollar amount?

23 A. \$4,243,372.66.

24 Q. And who is the originating party?

25 A. PDVSA, Petroleos.

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1 Q. Who is the beneficiary?

2 A. Clarity Trade Finance.

3 Q. Let's turn to page 2. Expand the text. Is this JP
4 Morgan's data that corresponds to the CHIPS message on page 1?

5 A. It does.

6 Q. So who is the debit party listed here?

7 A. Citibank NA.

8 Q. And where is Citibank located?

9 A. 111 Wall Street, New York, New York.

10 Q. And what does it mean that Citibank is the debit party?

11 A. It means that these funds originated outside of JP Morgan.
12 They moved from Citibank as a party to HypoSwiss Private Bank
13 AG.

14 Q. Looking at this information, can you explain the path that
15 the money took from beginning to end?

16 A. So here the order party, BESSFE, initiated the payment from
17 their account held at Citibank, crediting the HypoSwiss Private
18 Bank AG and JP Morgan.

19 Q. Turning back to page 6 of this exhibit, was the original
20 originator of the payment PDVSA in Venezuela, based on the
21 information or page one?

22 A. It is.

23 Q. Let's turn to Government Exhibit 406. And what kind of
24 document is this one?

25 A. This is also a CHIPS payment.

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1 MS. LAKE: So for this payment, can you highlight the
2 text next to number one?

3 Q. Who originated the payment?

4 A. PDVSA, Petroleosa.

5 MS. LAKE: Let's turn to page 2 to look at the rest of
6 the information. Expand that, please.

7 Q. What's the payment date?

8 A. December 30, 2011.

9 Q. What's the transaction amount?

10 A. \$6,704,753.09.

11 Q. Who is the debit party?

12 A. Citibank NA.

13 Q. And who is the credit party?

14 A. Hyposwiss Private Bank AG.

15 Q. So is it correct that this transaction began with PDVSA,
16 transited through Citibank in Manhattan to JP Morgan in
17 Manhattan, ultimately to Clarity Trade and Finance and
18 Hyposwiss based on what we just looked at?

19 A. Yes.

20 Q. Do you know whether each of the six transactions that we
21 just reviewed were ultimately processed and paid by JP Morgan?

22 A. Yes, they were.

23 MS. LAKE: And then I would like to show briefly
24 what's in evidence as Government Exhibit 2297A to have the
25 witness explain it.

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1 Q. What is this document?

2 A. So this is a swift message, an MT199.

3 Q. What kind of swift message is that?

4 A. It is a free format message.

5 Q. And when is a free format message used?

6 A. It's used by banks to communicate when one of the other
7 message types doesn't reflect what you're communicating.

8 Q. And what's the date on this?

9 A. 1st of July, 2014.

10 Q. And who is the sender?

11 A. JP Morgan Chase Bank NA in New York.

12 Q. And what is the purpose of this message?

13 A. This is a communication to a bank with a swift BECHZZ
14 identifying a transaction that was found to be in association
15 with sanctions against Iran.

16 Q. So what happened to that transaction?

17 A. This transaction was rejected and reported to OFAC.

18 MS. LAKE: No further questions at this time.

19 THE COURT: Mr. Heberlig.

20 It's been a long stretch, let's take a restroom break
21 and finish out the day.

22 Members of the jury, about a five to ten-minute break.

23 Thank you.

24 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Any matters to take up?

3 MS. KIM: No, your Honor.

4 THE COURT: We'll take a break for five minutes. I
5 still have a desire to give the jury a little bit of sense of
6 timing, so maybe you could think about and discuss what would
7 be an appropriate way to do it that doesn't feel like it's
8 jamming up the defense in any way.

9 MR. WEINGARTEN: Maybe say something like we're
10 optimistic.

11 THE COURT: Optimistic of what?

12 MR. WEINGARTEN: The end of the week.

13 THE COURT: That we'll get to closing arguments by
14 next week?

15 MR. WEINGARTEN: By the end of the week.

16 THE COURT: Before the end of next week.

17 MR. WEINGARTEN: Yes.

18 THE COURT: Is that comfortable?

19 MR. WEINGARTEN: Somewhat.

20 THE COURT: The other way to do it is say that we
21 anticipate the government will finish its presentation of
22 evidence by Monday, which is sooner than we expected, so we're
23 moving. Is that comfortable?

24 MR. KROUSE: Yes, your Honor. We're still planning to
25 sit until 5:00 today and all day tomorrow?

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1 THE COURT: Yeah, I guess one question is whether we
2 have enough to fill all day tomorrow. I recognize I said
3 Dubowitz on Monday in light of health issues.

4 MS. LAKE: Could we evaluate over the break?

5 THE COURT: Yeah, and I think also I do -- just with
6 everything that is going on I think -- I know it's exhausting,
7 but just getting it done as soon as reasonably can be makes
8 sense, and continue to desire to use tomorrow fully. But
9 depending where we are, I do want to think about the charging
10 conference Tuesday morning. If we're not going to use all of
11 Monday, there's the possibility moving it to Monday, depending
12 on where we are. But I know the defense won't be able to say
13 yet what they're going to do, but just if the government rests
14 Monday, if there's a very short defense case we should use the
15 time.

16 Anyway, I will gather the information, then you'll
17 tell me when we come back. And take five minutes. Thank you.

18 (Recess taken)

19 (Continued on next page)

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1 THE COURT: All right. Where are we?

2 Ms. Lake, in terms of the length of what we have to do
3 tomorrow, and what we can get through today I suppose?

4 MS. LAKE: Speaking to Mr. Heberlig, I think it sounds
5 like hopefully we'll finish with Mr. Blair today and then
6 tomorrow we will have sort of a longer section of documents
7 with the summary chart that we provided to defense, another
8 bank witness, some more documents and a very brief witness.

9 So I don't expect that it will take the entire day
10 tomorrow, but a fair chunk, probably past lunch. I don't
11 expect with this that we would go all the way until 5 tomorrow.

12 THE COURT: So how about I tell the jury that we will
13 do a half day tomorrow?

14 MS. LAKE: OK.

15 THE COURT: Some of them indicated to Mr. Scott they
16 would love to have time off tomorrow, as you all would too. So
17 I think if we can tell them that we'll do a half day tomorrow
18 and that the government anticipates that it will finish
19 presenting evidence on Monday, which is several days ahead of
20 where we thought we would be, how is that?

21 MS. LAKE: That sounds great.

22 MR. HEBERLIG: Yes.

23 THE COURT: All right.

24 MR. HEBERLIG: One thing we also discussed, it sounds
25 like there may be a possibility that Monday would be quite

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1 limited for the government if they decided for instance not to
2 call Mr. Dubowitz.

3 If that is the case, we will be prepared to go if we
4 know on Saturday. You know, if we find out on Sunday night it
5 is going to be a little tricky. I think we have an
6 understanding in that regard.

7 MR. KROUSE: We do have an understanding. The issue
8 is what I mentioned yesterday to the Court about his health. We
9 will know by Saturday if he's going to be able to travel here
10 to appear on Monday.

11 MR. WEINGARTEN: I am hearing this for the first time.
12 There is a chance Dubowitz won't testify?

13 MR. KROUSE: I think I mentioned yesterday -- you
14 might have been out of the courtroom or didn't hear -- he is
15 having some health issues. Nothing too serious I don't think,
16 but it could impact his ability to travel here.

17 THE COURT: If he can't, then the government is not
18 going to sub?

19 MR. KROUSE: We may try, your Honor, that is sort of
20 on the docket for tonight. If we don't have anyone and don't
21 give notice, then we'll rest.

22 THE COURT: OK. And if Dubowitz does testify, what's
23 the length of time we think?

24 MR. KROUSE: For his direct testimony, he would
25 probably be a half hour to an hour conservatively.

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1 THE COURT: I guess I am just -- I am starting to
2 wonder whether we should give the jury the day off tomorrow.
3 It sounds like either way, you all will finish on Monday.

4 Is that fair to say?

5 MR. HEBERLIG: I think that would be sensible, your
6 Honor.

7 MR. KROUSE: The only hesitation from the government
8 is that, based on yesterday, we had a witness travel here --

9 THE COURT: OK.

10 MR. KROUSE: -- who now looks like he's definitely not
11 going to be getting on today.

12 THE COURT: How long of a cross do you have,
13 Mr. Heberlig?

14 He's here, Mr. Krouse?

15 MS. LAKE: He is in New York. He is not at the
16 courthouse because we thought there was no way he would get on
17 today.

18 MR. HEBERLIG: I think I'm going to get to the end of
19 the day. I hope to finish, but it's going to be close.

20 THE COURT: All right.

21 MS. LAKE: If we could just do the half day, he'll get
22 on and off the stand and we'll do some documents.

23 THE COURT: All right. I'll tell them we'll do that.
24 I'll tell them we will do a half day tomorrow and that the
25 government anticipates that it will complete its presentation

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1 of evidence by Monday, which is several days ahead of where we
2 thought we would be.

3 OK. We will bring the witness back, please.

4 You may take your seat. Thank you.

5 THE WITNESS: Thank you.

6 (Witness resumed)

7 (Continued on next page)

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Blair - Cross

1 (Jury present)

2 THE COURT: Thank you, everyone.

3 You may take your seats.

4 Thank you, members of the jury.

5 Just a quick note on schedule. I know some of you had
6 indicated a desire for some amount of tomorrow off, and we can
7 accommodate that. We are going to do a half day tomorrow. So
8 you can plan on that. We'll start at our normal time and we'll
9 end by lunch.

10 So thank you for that. I hope knowing that helps you
11 plan. With today and with that half day tomorrow, we do
12 anticipate that the government will finish its presentation of
13 evidence by Monday. That's several days ahead of where we
14 thought we would be.

15 I'll keep you apprised as soon as we know more
16 information about the schedule and any planning ahead we can
17 do. Half day tomorrow, and that's where we are, which is
18 several days ahead of where we anticipated.

19 With that, cross-examination.

20 Mr. Heberlig, you may proceed.

21 CROSS-EXAMINATION

22 BY MR. HEBERLIG:

23 Q. Good afternoon, Mr. Blair.

24 A. Good afternoon.

25 Q. I am Brian Heberlig. I represent the defendant, Ali Sadr.

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Blair - Cross

1 Just a couple of questions about your background. I am not
2 sure I caught your educational background.

3 Where did you go college.

4 A. I went to SUNY Binghamton.

5 Q. Do you have any postgraduate degrees?

6 A. I do not.

7 Q. You are not a lawyer, I take it?

8 A. I am not.

9 Q. How long have you been at J.P. Morgan?

10 A. Since 2011, so about nine years.

11 Q. That whole time you have been in the compliance enforcement
12 function one way or another?

13 A. Yes.

14 Q. Are you familiar with J.P. Morgan's compliance program in
15 the years prior to your arrival?

16 A. Not directly.

17 Q. A few questions about the types of correspondent banking
18 transactions we have been discussing. Am I correct those types
19 of transactions are sometimes referred to as clearing
20 transactions, U.S. dollar clearing?

21 A. Yes.

22 Q. OK. And my questions in particular are focused on U.S.
23 dollar transactions from one foreign bank to another foreign
24 bank.

25 OK. A wire transfer originates at the bank of the

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Blair - Cross

1 party that is sending the money, correct?

2 A. Yes.

3 Q. And that party is sometimes referred to as the sender or
4 the payor?

5 A. Yes.

6 Q. And the wire transfer is received at the person who's owed
7 the money or who's receiving the money, correct?

8 A. Correct.

9 Q. That party is sometimes referred to as the recipient or the
10 payee, is that correct?

11 A. Yes.

12 Q. And in the transactions you have testified about in this
13 case, both the sender's bank and the recipient's bank were
14 foreign banks, correct?

15 A. That's correct.

16 Q. And they weren't U.S. banks?

17 A. Not to my knowledge.

18 Q. All right. I think you testified about the process, but
19 for one foreign bank to send a U.S. dollar transfer to another
20 foreign bank, am I right that typically the foreign bank needs
21 to use a U.S. intermediary bank?

22 A. Unless they have a physical presence in the United States,
23 right, the ability to bank in the United States, yes, they
24 would need a U.S. intermediary.

25 Q. You are saying if a foreign bank had, say, a U.S. branch,

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Blair - Cross

1 it could do it itself?

2 A. Correct.

3 Q. But in an instance in which the two foreign banks don't
4 have a U.S. branch, generally speaking they would need the
5 U.S. -- excuse me, need to use the U.S. intermediary bank?

6 A. Correct.

7 Q. Is there any way for a foreign bank to send U.S. dollars to
8 another foreign bank without using a U.S. intermediary bank?

9 A. Unless they have that physical presence in the United
10 States, no.

11 Q. How about are there systems in other countries, for
12 instance, Hong Kong, where one party might transfer U.S.
13 dollars to another party without clearing it through the United
14 States?

15 A. They would need to be connected to the U.S. financial
16 system.

17 Q. OK. What do you mean by connected?

18 A. Have a correspondent bank relationship or have a presence
19 in the United States to be part of the Federal Reserve system.

20 Q. OK. How about if a foreign bank had its own store of U.S.
21 dollars or its own reserves of U.S. dollars and two parties
22 both had accounts at that foreign bank.

23 Could a transfer be made within the bank that did not
24 involve the U.S. financial system?

25 A. I don't know. I guess if they're literally moving their

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Blair - Cross

1 physical cash around, potentially.

2 Q. Say the foreign bank had 100 million U.S. dollars in
3 reserves, and two of its customers wanted to move \$1 million
4 from one customer to another. That type of transfer would not
5 require the involvement of a U.S. intermediary bank, correct?

6 A. I guess not.

7 Q. OK. Focusing on these transactions, J.P. Morgan was the
8 intermediary bank, correct?

9 A. Correct.

10 Q. Sometimes the term has been used as correspondent bank. Am
11 I right that the correspondent banks are also known sometimes
12 as the two foreign banks? Those are the correspondents of the
13 intermediary bank? The terminology gets confusing.

14 A. Agreed, it does.

15 Q. I am going to refer to J.P. Morgan as the intermediary
16 bank. Is that a term you're comfortable with?

17 A. It is.

18 Q. All right. J.P. Morgan is one of the top intermediary
19 banks in the world, correct?

20 A. Yes.

21 Q. How many foreign banks does J.P. Morgan have correspondent
22 relationships with?

23 A. I couldn't say.

24 Q. Is it more than a hundred?

25 A. Potentially.

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Blair - Cross

1 Q. As many as a thousand?

2 A. Potentially.

3 Q. And I think you testified on direct that J.P. Morgan clears
4 somewhere around 2 million of these U.S. dollar wire transfers
5 a day?

6 A. Yes.

7 Q. Do you have a sense of how much money clears every day in
8 J.P. Morgan in terms of the amount of dollars?

9 A. It's probably somewhere between two and three trillion
10 dollars.

11 Q. That clearing process is automated, correct?

12 A. Yes.

13 Q. It's run by computers?

14 Is that a yes?

15 A. Yes.

16 Q. OK. A bank that submits a wire transfer request does so
17 electronically typically, correct?

18 A. Correct.

19 Q. And J.P. Morgan processes those wire transfer requests
20 electronically?

21 A. Correct.

22 Q. And a wire transfer request is processed in a nanosecond,
23 correct?

24 A. Not quite, but, yes, it happens very quickly.

25 Q. Seconds? Is that fair?

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Blair - Cross

1 A. Sure. Around 60 seconds on average if there's no concerns.

2 Q. All right. Unless, of course, a wire hits on one of the
3 screening terms you testified about, correct? And we'll come
4 back to that topic.

5 THE COURT: You shook your head. Could you just --

6 A. Yes.

7 THE COURT: Thank you.

8 Q. Does J.P. Morgan charge a fee for its correspondent banks
9 to process these wire transfers?

10 A. I believe so.

11 Q. And is the fee charged on a per-wire basis?

12 A. I believe so.

13 Q. Does it depend on the amount of money that's being wired?

14 A. No.

15 Q. How much is the fee typically?

16 A. I believe each wire is about \$20.

17 Q. OK. So whether you are transferring a hundred dollars or
18 a hundred million dollars, you pay J.P. Morgan 20 bucks?

19 A. If you are wiring it, yes.

20 Q. Now, in the transactions you have been testifying about,
21 J.P. Morgan's customer relationship is with the foreign
22 correspondent banks, correct?

23 A. Correct.

24 Q. And the sender and the recipient of the money are customers
25 of those foreign banks, right?

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Blair - Cross

1 A. Yes.

2 Q. They are not J.P. Morgan's customers, correct?

3 A. Correct.

4 Q. So you've testified about some transactions involving a
5 company named Clarity Trade & Finance. That company had an
6 account with the Hyposwiss Bank, correct?

7 A. Yes.

8 Q. And it was the Hyposwiss bank that had an account with J.P.
9 Morgan?

10 A. Correct.

11 Q. Clarity did not?

12 A. Not to my knowledge.

13 Q. I think you testified about this concept of KYC on direct,
14 is that correct?

15 A. Yes.

16 Q. And that stands for know your customer?

17 A. Yes.

18 Q. That is a process that the bank must go through to do
19 what's known as due diligence to find out certain information
20 about its customer, correct?

21 A. Correct.

22 Q. In this context, the KYC that J.P. Morgan performed was on
23 the foreign correspondent banks, correct?

24 A. Yes.

25 Q. Like Hyposwiss in the transactions we have been talking

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Blair - Cross

1 about?

2 A. Yes.

3 Q. J.P. Morgan did not perform due diligence on the individual
4 sender or receiver of the transactions, correct?

5 A. Correct.

6 Q. So in our instance, in our case, PDVSA on the one side
7 sending the money, Clarity on the other side receiving the
8 money, it was not J.P. Morgan's responsibility to do KYC on
9 those two parties?

10 A. Correct.

11 Q. And J.P. Morgan didn't do so?

12 A. Not to my knowledge.

13 Q. And that's in part because were that responsibility to fall
14 to the intermediary bank for each of these two million
15 transfers a day, it would be a time-consuming and expensive
16 process, correct?

17 A. No, I don't believe that's why.

18 Q. So, for the 2 million transfers a day, if you were
19 obligated to do individual KYC due diligence on each sender and
20 receiver sending money through the bank, it wouldn't be a
21 time-consuming process?

22 A. I'm sure that it would be time consuming, but KYC is done
23 on accounts when they're opened and then periodically
24 thereafter. They are not done at the time of transaction
25 processing.

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Blair - Cross

1 Q. So there would be an initial obligation; once you completed
2 your KYC, you would sort of have it in the file. Is that
3 right?

4 A. Correct.

5 Q. OK. What we're talking about, the fact that J.P. Morgan
6 didn't conduct due diligence or KYC on its customer's customer,
7 do you know that term sometimes to be referred to as KYCC, know
8 your customer's customer?

9 A. No, I'm not familiar with that.

10 Q. OK. Well, regardless of the terminology, am I right that
11 the bank's decision not to perform that kind of due diligence
12 was because banking regulators didn't expect it to do so,
13 correct?

14 A. Yes. That's the nature of a correspondent bank
15 relationship.

16 Q. Had you been obligated to do so by law or regulation, of
17 course, J.P. Morgan would have done so?

18 A. Yes.

19 Q. OK. Your regulators, your banking authorities, OFAC, did
20 not put that responsibility on an intermediary bank like J.P.
21 Morgan to do diligence about its customers' customers, correct?

22 A. Correct.

23 Q. I want to talk a little bit about the due diligence process
24 that you did perform on your customer in this case, HypoSwiss.

25 It is correct that J.P. Morgan conducted

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Blair - Cross

1 know-your-customer due diligence on Hyposwiss, right?

2 A. I would expect it to.

3 Q. And you know that J.P. Morgan's due diligence and screening
4 process for its customers is rigorous, is it not?

5 A. Yes.

6 Q. You follow all of best practices in banking standards that
7 are required under the law?

8 A. I would hope so.

9 Q. In this instance, for Hyposwiss to be able to have a
10 correspondent banking relationship with J.P. Morgan that
11 allowed it to process wire transfers, it had to pass the due
12 diligence requirements of J.P. Morgan, correct?

13 A. Yes.

14 Q. Had J.P. Morgan flunked Hyposwiss, it wouldn't have done
15 business with you, right?

16 A. Corrects.

17 MR. HEBERLIG: Can you pull up Defense Exhibit 1905
18 for the witness only, please.

19 Q. I have a paper copy if you could be more comfortable. You
20 are welcome to use the screen.

21 A. This is fine.

22 Q. OK. Sir, do you recognize the document in front of you to
23 reflect a due diligence report of Hyposwiss Bank conducted by
24 J.P. Morgan?

25 A. Yes.

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Blair - Cross

1 MR. HEBERLIG: I move its admission, your Honor.

2 MS. LAKE: No objection.

3 THE COURT: Thank you. Defendant's Exhibit 1905 is
4 admitted.

5 (Defendant's Exhibit 1905 received in evidence)

6 MR. HEBERLIG: Thank you.

7 Can we publish your Honor?

8 THE COURT: You may.

9 MR. HEBERLIG: Can you focus us on the dates in the
10 lower right-hand corner, please, last renewed date.

11 BY MR. HEBERLIG:

12 Q. The report appears to be dated January 29, 2013, correct?

13 A. Unless that is a reference to the last renewed date of the
14 secondary renewal owner.

15 Q. OK. Well, in any event, the risk assessment date you see
16 there is October -- down at the very, very bottom -- October
17 23, 2012?

18 A. Yes.

19 Q. Does that generally reflect when the bank makes its
20 decision on the customer's risk assessment?

21 A. I believe so.

22 MR. HEBERLIG: All right. Let's zoom back out,
23 please. I just want to highlight a few things from the report.
24 Can you just highlight the very top of the report down through
25 the customer legal address.

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Blair - Cross

1 OK. That's fine.

2 BY MR. HEBERLIG:

3 Q. Is the parent name of the bank reflected on this page down
4 toward the bottom?

5 A. It appears that it is.

6 Q. All right. Do you see the name St. Galler Kantonal bank
7 AG?

8 A. I do.

9 Q. Are you familiar with that bank?

10 A. I am not.

11 Q. Are you familiar with the concept of a cantonal bank in
12 Switzerland?

13 A. I am not.

14 MR. HEBERLIG: Let's zoom back out for a moment.

15 Highlight the paragraph under the renewal status, not the
16 paragraph, but the section. All right.

17 BY MR. HEBERLIG:

18 Q. Does this indicate under renewal incremental status that
19 the KYC had been completed?

20 A. Yes, it does.

21 MR. HEBERLIG: All right. Let's turn to page 3 of
22 this document, please. If you could just highlight the KYC
23 type table there.

24 Q. Can you just give us a sense in looking at this, what is
25 the nature of the KYC screening that J.P. Morgan would conduct

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Blair - Cross

1 on a correspondent bank like Hyposwiss, what these things mean,
2 what it looked for?

3 A. So it would look at -- so standard due diligence, the third
4 item down on the left, it refers to a standard level of KYC
5 review. Enhanced due diligence refers to an enhanced form of
6 KYC review, a more complex form that's done.

7 I am not sure what MIFID nonsecurities lending refers
8 to.

9 Q. OK.

10 A. TSS products would refer to Chase Treasury Services.

11 Q. How about the term EMEA? Does that commonly stand for
12 Europe, Middle East, and Africa?

13 A. It does.

14 Q. What sort of screening would J.P. Morgan do with respect to
15 the Europe, Middle East, and Africa?

16 A. It would meet local requirements of both Switzerland and
17 the EU.

18 Q. OK. And the bank was approved in that category, correct?

19 A. Yes.

20 MR. HEBERLIG: Let's go to page 7, please.

21 Can you highlight just where it says in red there
22 "negative media search is required," down about 10 lines or so.
23 You have to scroll over to the right a little bit, please. OK.

24 Q. Fair to say J.P. Morgan would also conduct a search of
25 media to see if there had been any negative stories about the

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Blair - Cross

1 bank?

2 A. Yes. That's negative media.

3 Q. This reflects the fact that a search was conducted and
4 there had been no negative media in the past five years about
5 Hyposwiss, correct?

6 A. I believe so.

7 Q. And likewise in the next question, the client --

8 That's Hyposwiss, correct?

9 A. Yes.

10 Q. -- had not been subject to any fines, penalties, sanctions
11 or other similar negative actions associated with money
12 laundering or terrorist financing in the past five years,
13 correct?

14 A. It appears so.

15 MR. HEBERLIG: Let's go a little further down the
16 page, please. If we can zoom out. Thank you. All right.

17 Q. This indicates five or more years is the period of time
18 that Hyposwiss had maintained a relationship with J.P. Morgan,
19 is that correct?

20 A. Yes.

21 Q. And there's information presented here about -- the
22 question posed is, what is the money laundering supervisory
23 regime of the client?

24 And there's information here about Switzerland,
25 significant AML legislation in place, and some other

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Blair - Cross

1 information.

2 Do you see that?

3 A. Yes.

4 Q. It also says Switzerland is a member ever the FATF.

5 Do you know what the FATF is?

6 A. I don't.

7 Q. Do you know that it stands for the financial action task
8 force? Have you ever heard of that?

9 A. No.

10 Q. OK. All right. As a result --

11 MR. HEBERLIG: We can take that down.

12 Q. I think you said as a result of the review Hyposwiss was
13 renewed again and allowed to continue transacting, correct?

14 A. I would assume so.

15 Q. OK. A few more questions about the mechanics of how these
16 payments worked. I just want to understand mechanically.

17 So we've talked about there are two foreign banks on
18 each side of the transaction, correct?

19 A. Correct.

20 Q. J.P. Morgan's in the middle as the intermediary. So if we
21 are talking about one of these PDVSA transfers to Clarity on
22 the sender's site, we have PDVSA as the sender, correct?

23 A. Yes.

24 Q. And PDVSA has a relationship with its own foreign bank,
25 correct?

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Blair - Cross

1 A. Yes.

2 Q. That's the customer relationship there?

3 A. Yes.

4 Q. That foreign bank has a relationship with J.P. Morgan,
5 correct?

6 A. Correct.

7 Q. On the other side of the transaction, J.P. Morgan has a
8 relationship with Hyposwiss?

9 A. Correct.

10 Q. And Clarity has the customer relationship with Hyposwiss?

11 A. Correct.

12 Q. When PDVSA would transfer money to Clarity, and let's just
13 assume -- we'll use a million dollars as a round number. PDVSA
14 needed to have at least a million dollars in its account with
15 its own foreign bank, correct, to do that?

16 A. I should think so.

17 Q. And when PDVSA would initiate the wire transfer, its
18 foreign bank would debit PDVSA's account and be credited that
19 \$1 million, correct?

20 A. Yes.

21 Q. OK. And the bank wouldn't literally go collect the
22 physical \$1 million from PDVSA, correct? These are book
23 entries?

24 A. Yes. If the account is held on their books, yes, they
25 wouldn't.

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Blair - Cross

1 Q. We've established that PDVSA had an account with J.P.
2 Morgan, right? Excuse me, PDVSA's foreign bank had an account
3 with J.P. Morgan, right?

4 A. Correct.

5 Q. And likewise HypoSwiss did as well.

6 So when PDVSA was credited that \$1 million from its
7 customer, J.P. Morgan would debit its account, correct?

8 A. Yes.

9 Q. And simultaneously credit HypoSwiss' account?

10 A. Correct.

11 Q. OK. And then HypoSwiss would credit its customer, Clarity,
12 is that correct?

13 A. Yes.

14 Q. OK. And those accounting entries, when that would occur,
15 would they be as instantaneous as the wire transfer processing
16 time you reflected, 60 seconds or less?

17 A. Essentially, yes.

18 Q. And no physical U.S. dollars are changing hands in that
19 type of transaction, these are book entries within J.P. Morgan
20 for PDVSA's foreign bank account to HypoSwiss' foreign bank
21 account, correct?

22 A. Yes.

23 Q. And if PDVSA's foreign bank account with J.P. Morgan didn't
24 have \$1 million in it, you would not have processed the
25 transfer, correct?

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Blair - Cross

1 A. Correct.

2 Q. So is it fair to say that in none of the transactions we
3 have been talking about J.P. Morgan was transferring its own
4 money to HypoSwiss?

5 A. Yes, that's fair to say.

6 Q. And J.P. Morgan did not lose any money on any of the
7 transactions we have been talking about in this trial?

8 A. No.

9 Q. In fact, it gained \$20 times eight transactions? 160
10 bucks?

11 A. Sure.

12 Q. All right. Let me switch gears and talk a bit about the
13 bank's compliance program that you testified about on direct.

14 I want to be clear. My questions are focused on J.P.
15 Morgan's policies, OK? I am not asking for your legal opinion
16 on what the law required.

17 You talked about the compliance program in place at
18 J.P. Morgan to screen for potential Iran sanctions violations,
19 correct?

20 A. Yes.

21 Q. And the first line of defense was the vendor tool you
22 described and I think you called it Fircosoft?

23 A. Yes, that's correct.

24 Q. And that's the tool that automatically screens information
25 that's in the wire transfer request, correct?

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Blair - Cross

1 A. Yes.

2 Q. Those electronic payment instructions?

3 A. Correct.

4 Q. So when the electronic payment instruction is made, the
5 computer searches the fields in those instructions for keywords
6 or terms, correct?

7 A. Yes.

8 Q. Some of the fields are the originator of the transaction,
9 correct?

10 A. Yes.

11 Q. Another field would be the beneficiary or recipient?

12 A. Yes.

13 Q. You would also screen things like address, correct?

14 A. Correct.

15 Q. OK. In the context of the Iran sanctions regime, one of
16 the principal things you were screening for was what either the
17 sender or the recipient of the money was especially designated
18 a national, correct?

19 A. Correct.

20 Q. That is a list that's maintained by OFAC, correct?

21 A. Correct.

22 Q. It's made publicly available to all the banks?

23 A. Yes.

24 Q. So if there are a hundred names, I know there are well more
25 than 100 names, but all those names get fed into that vendor

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Blair - Cross

1 program that you described, correct?

2 A. Yes.

3 Q. So if the Acme Company is a specially designated national
4 and you received a payment that is either from or to the Acme
5 Company, it would hit your software?

6 A. I would expect it to.

7 Q. How about the address field that you checked? If there was
8 an Iranian address in the payment instruction, would the tool
9 automatically flag the payment?

10 A. Yes.

11 Q. And I think you testified that one of the key terms you
12 screened for was actually the word Iran, correct?

13 A. Yes.

14 Q. So if the tool was operating correctly, if the word Iran
15 was anywhere in the payment instructions, the transaction would
16 be screened for further scrutiny, further review, correct?

17 A. Yes.

18 Q. And how about did you screen for Iranian sounding names?

19 A. No. Only names that are on the SDN list.

20 Q. So two popular surnames, excuse me, popular first names in
21 Iran, Mohammad and Ali, would you screen for names like that?

22 A. If they are on the sanction list, yes.

23 Q. So if there is a person on the sanctions list whose name is
24 Mohammad something or Ali something, then you would search for
25 it?

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Blair - Cross

1 A. It would only generate if both of them are present, but
2 yes.

3 Q. OK. How about variations of the name, like Iranian, would
4 you search for that as well?

5 A. Yes.

6 Q. How about Persian?

7 A. Yes.

8 Q. And if either of those terms were in the instructions, the
9 transaction would be pulled aside, correct?

10 A. Yes.

11 Q. Popular Iranian cities, would you search for those as well?

12 A. Yes.

13 Q. All right. So any business with the name Iranian in its
14 business name would be flagged by your system, correct?

15 A. Yes.

16 Q. It would be impossible to automatically clear a wire
17 through J.P. Morgan if the name Iranian was part of the
18 business of either the sender or recipient, correct?

19 A. I would hope so.

20 Q. You said once a flag is hit there is a secondary process of
21 review, correct?

22 A. Yes.

23 Q. And that process takes some time, fair?

24 A. Correct.

25 Q. But some of the transactions that are hit initially are

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Blair - Cross

1 ultimately cleared through by J.P. Morgan, correct?

2 A. Yes.

3 Q. I think you described those as false positive?

4 A. Correct.

5 Q. All right. So, again, focusing on the bank's policies, not
6 on what you understand the law to be, I have a few questions
7 about that.

8 If upon further review the bank determined that a wire
9 transfer was being received by an Iranian citizen who is living
10 outside of Iran, say in a place like Europe, would the bank put
11 that transaction through?

12 A. Would it put it through?

13 Q. Would it allow it to clear after you've done your second
14 review, determined that there was Iranian citizen receiving the
15 payment, but he or she was living outside of Iran, would the
16 bank allow the transaction to clear after the secondary review?

17 A. Yes.

18 Q. OK. How about if it was a business located in France named
19 the Iranian Ice Cream Company and after doing your due
20 diligence you determined that that company was not incorporated
21 or located in Iran, it was in France? Would you clear the
22 money through?

23 A. If it was found to have no associations to Iran, yes, it
24 would be cleared.

25 Q. And likewise for the Tehran Cafe in London?

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Blair - Cross

1 A. Yes.

2 Q. But in each of those instances the transaction would need
3 to go through your secondary screening?

4 A. Correct.

5 Q. How long would a process like that take?

6 A. So the investigation process can take anywhere from a day
7 to about two and a half weeks.

8 Q. And during that time period the money that one party was
9 trying to send to, say, the owner of the Iranian Ice Cream
10 Company in France would be held within J.P. Morgan and not sent
11 on through, correct?

12 A. Correct.

13 Q. Now, one last hypothetical.

14 What if the banks' investigation revealed that the
15 company receiving the wire transfer was located outside of Iran
16 but it had a minority owner who lived in Iran? Would that kind
17 of transaction clear through?

18 A. It may clear through. It may -- they may take a risk-based
19 approach and determine to not be associated to the transaction.

20 Q. One possibility, when you say risk-based approach, would
21 be, if the bank couldn't get definitive information one way or
22 another whether there was a sanctions issue, it might just say
23 we're canceling this transaction?

24 A. Correct.

25 Q. Because it wasn't worth the risk for the 20 bucks to

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Blair - Cross

1 process that kind of transaction, fair?

2 A. Correct.

3 Q. Are you familiar with a concept in banking known as
4 derisking?

5 A. Derisking?

6 Q. Derisking.

7 A. No, I'm not.

8 Q. OK. What happens if a foreign correspondent bank sends too
9 many wire transfers that wind up being rejected or blocked by
10 J.P. Morgan for sanctions issues? Would you ultimately cease
11 relations with that bank?

12 A. The relationship would be reconsidered, certainly.

13 Q. And how about a scenario where there were repeated and
14 multiple flags that turn out to be false positives? Would that
15 also be something you would take into consideration when
16 determining whether to maintain a business relationship with a
17 bank?

18 A. No, that would not be taken into account.

19 Q. Not a factor at all if there were multiple false positives?
20 It's only if there is an actual issue?

21 A. Correct.

22 Q. You testified a little bit about steps that would be taken
23 after the sort of secondary review you've just been describing.
24 I want to ask you some questions about that.

25 One action I think you said would be for the bank to

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Blair - Cross

1 block the transaction, correct?

2 A. Yes.

3 Q. In that case the bank would actually freeze the money in
4 its account?

5 A. It would be moved to its own account, yes.

6 Q. To the bank's own account?

7 A. No, to an account for that transaction.

8 Q. OK. But the money would be maintained within the bank?

9 A. Correct.

10 Q. It wouldn't go to the customer, correct?

11 A. Correct.

12 Q. OK. That sort of blocking under the bank's policies would
13 occur -- focused still on the Iranian context here -- if the
14 transaction involved an SDN, is that fair?

15 A. Yes.

16 Q. Meaning the government of Iran or other specially
17 designated nationals?

18 A. Yes.

19 Q. And when did that blocking obligation become policy at J.P.
20 Morgan? Do you recall?

21 A. No, I don't.

22 Q. All right. Was it in place when you got there, or was it
23 something that occurred within the first year or two after you
24 arrived?

25 A. I guess, to my knowledge, it was in place when I got there.

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Blair - Cross

1 Q. OK. So a second type of resolution I think you described
2 would be a rejection, correct?

3 A. Correct.

4 Q. And a rejection might occur if you determined under the
5 bank's policies that there could be a sanctions issue, but it
6 didn't involve an SDN, you would just reject the payment,
7 correct?

8 A. Correct.

9 Q. And the difference between rejecting and blocking is that
10 when there is a rejection the money would go back to the
11 originating party, correct?

12 A. Correct. It would be going to the remitter.

13 Q. In both instances the bank would report the information to
14 OFAC, correct?

15 A. Correct.

16 Q. And that's required by law?

17 A. Yes.

18 Q. A third option -- I think you described this, but, if not,
19 let me just ask. Would a third option be for J.P. Morgan to
20 just cancel the transaction?

21 A. It is. Canceling is not usually an action taken with
22 sanctions.

23 Q. Well, in the instance we described before or you described
24 before, where you just couldn't figure out the facts but you
25 decided it's too risky, we are not going to put it through,

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Blair - Cross

would that be an instance that would be accurately described as
canceling a transaction?

A. Potentially, yes.

Q. When transactions are canceled, there's not the same
obligation to report to OFAC, is that correct?

A. Not -- to my knowledge, yes.

Q. You were asked a couple of questions about this concept of
stripping. Do you recall those questions?

A. I do.

Q. I think you gave an example of a North Korean general, is
that right, who was under sanctions?

A. I did.

Q. If someone wanted to send money to that person, they might
take out his name. That's the example you gave of wire
stripping, is that correct?

A. Yes.

Q. I think you had said it was to conceal information if the
party knows that the transaction would violate the sanctions,
correct?

A. I believe I said that.

Q. And that's your understanding of what the concept of
stripping is? Someone who believes they are engaged in a
transaction that would violate the sanctions does something to
conceal that fact, right?

A. Yes.

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Blair - Cross

1 Q. I want to talk a little bit, still focused on J.P. Morgan's
2 policies, about indirect parties to wire transfers.

3 Am I correct that as a matter of J.P. Morgan's
4 policies, you did not require foreign correspondent banks to
5 identify information beyond the sender and the recipient of the
6 funds?

7 A. Correct.

8 Q. OK. Again entirely consistent with the guidance you had
9 been given by banking regulators, correct?

10 A. I believe so, yes.

11 Q. And those same banking regulators and J.P. Morgan pursuant
12 to its policy did not require intermediary banks to demand
13 anything more than that information about the sender and the
14 recipient of the funds, correct?

15 A. To my knowledge.

16 Q. And in J.P. Morgan's instance your additional obligation --
17 let me back up. You had two obligations. You had to make sure
18 those fields were filled out in a wire transfer, correct,
19 sender and recipient?

20 A. Correct.

21 Q. And you had to have an adequate compliance program to
22 screen those names against the SDN list and country
23 information, correct?

24 A. Correct.

25 Q. If you had both of those things, you fully satisfied your

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Blair - Cross

1 obligations under what you understand to be applicable law?

2 A. As I understand them.

3 MR. HEBERLIG: Bear with me just one second. I'm
4 trying to make this shorter.

5 THE WITNESS: I appreciate that.

6 Q. As a matter of policy, J.P. Morgan did not require either
7 the sender or the recipient of a wire transfer to tell the bank
8 whether it intended to transfer the money to someone else,
9 correct?

10 A. I'm sorry. Can you repeat the question.

11 Q. Maybe I'll ask it a different way. As a matter of J.P.
12 Morgan's policy, you did not ask your foreign correspondent
13 banks to demand from their customers information about whether
14 the transaction was being performed on behalf of somebody else,
15 correct?

16 A. Correct.

17 Q. You could have done so, correct?

18 A. I guess we could have, yes.

19 Q. You could have asked your foreign correspondent banks to
20 demand from every sender of a wire transfer a certification
21 that the payment didn't violate any sanctions regime. That was
22 within your ability to request, was it not?

23 A. I guess.

24 Q. But that was not bank policy, correct?

25 A. To my knowledge, no, it was not.

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Blair - Cross

1 Q. And to your knowledge, that was not required under the
2 applicable regulations that apply to intermediary banks?

3 A. Correct.

4 Q. Because if it was, J.P. Morgan would have done it?

5 A. I would hope so.

6 Q. Now, am I right that as a result of the wire transfers in
7 this case that you've testified about J.P. Morgan has not been
8 criminally prosecuted?

9 A. To the my knowledge.

10 Q. OFAC has not pursued any enforcement action against the
11 bank for violating the Iran sanctions as a result of those wire
12 transfers?

13 A. Not to my knowledge.

14 Q. And J.P. Morgan has not been fined by OFAC for violations
15 of the Iran sanctions regime as a result of wire transfers you
16 testified about in this case?

17 A. Not to my knowledge.

18 Q. And you're not aware of even the bank having received a
19 cautionary letter or any other sanctions from OFAC as a result
20 of your behavior, correct?

21 A. In these instances, no, I'm not.

22 Q. OK. You understand that the allegations in this case are
23 that the bank, J.P. Morgan, did not know of any information in
24 these wire transfers that potentially violated the sanctions,
25 correct?

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Blair - Cross

1 A. Well, I don't really know those allegations, but that's
2 what I determined from those transactions.

3 Q. Do you understand that the government maintains that J.P.
4 Morgan is the alleged victim of the crime?

5 A. No, I don't know that.

6 Q. Do you have any reason to believe anyone at J.P. Morgan
7 knew that these wire transfers in this case related in any way
8 to Iran?

9 A. No.

10 MS. LAKE: Objection. Lack of foundation.

11 THE COURT: Overruled.

12 Q. All right. Even assuming for present purposes that the
13 wire transfers in this case violated the sanctions, and I don't
14 concede that, but I will assume it for purposes of these
15 questions, am I correct that because J.P. Morgan didn't know
16 about that potential violation, the risk of any penalty to the
17 bank was low?

18 A. No. That's not necessarily true.

19 Q. Isn't it true that the risk to the bank for being
20 sanctioned as a result of these payments was virtually
21 nonexistent?

22 MS. LAKE: Objection. Asked and answered.

23 THE COURT: Sustained.

24 Q. The only way that J.P. Morgan could have been in trouble
25 with OFAC or the regulators for these transactions is if your

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Blair - Cross

1 compliance program was deemed deficient, correct?

2 A. No, that's not true.

3 Q. J.P. Morgan's compliance program you've testified about was
4 one of the more robust programs in banking practice, correct?

5 A. I hope so.

6 Q. And your testimony is that, despite complying with all of
7 the rules and regs as we just talked about and not having any
8 knowledge that anyone at J.P. Morgan knew of any connection to
9 Iran with these wire transfers, the bank was at risk of
10 enforcement action?

11 A. If OFAC found it so, yes.

12 Q. If OFAC found it so? You are aware of the fact that OFAC
13 knows of this case?

14 MS. LAKE: Objection.

15 THE COURT: Sustained.

16 Q. There was an OFAC witness to testified in court --

17 MS. LAKE: OK.

18 THE COURT: Sustained.

19 Q. Would you agree that a bank that transacts millions of
20 transactions a day, as J.P. Morgan does, inevitably, despite
21 all best practices, might allow some transactions through that
22 could violate the sanctions?

23 MS. LAKE: Objection.

24 THE COURT: Overruled.

25 A. Potentially, yes.

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Blair - Cross

1 Q. If you wanted to eliminate any possibility of that
2 happening, you would have to do individual
3 transaction-by-transaction due diligence, would you not?

4 A. Well, you could not process transactions.

5 Q. It would grind the financial system to a halt, would it
6 not?

7 A. It would.

8 Q. The fact is the bank in your instance did everything it was
9 expected to do here, correct?

10 A. As far as I can tell.

11 Q. You testified a little bit about reputational risk. Do you
12 recall those questions?

13 A. I do.

14 Q. In this instance, J.P. Morgan processed seven wire
15 transfers over a roughly 18-month period that relate to this
16 case, correct?

17 MS. LAKE: Objection.

18 THE COURT: Overruled.

19 A. I don't memorize the dates, but potentially.

20 Q. OK. Over a more than one-year period in the neighborhood
21 of seven or eight wire transfers I think were shown to you on
22 your direct examination, correct?

23 A. I believe six wire transfers, but, yes.

24 Q. Six wire transfers during a period in which J.P. Morgan was
25 clearing 2 million wires a day, correct?

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Blair - Cross

1 A. Yes.

2 Q. And in an instance in which you believed that the bank had
3 no knowledge of any connection to Iran in these payments,
4 correct?

5 A. Yes.

6 Q. Do you believe that the bank has suffered reputational harm
7 as a result of this case?

8 A. Not to my knowledge.

9 Q. Do you believe the bank has lost any business as a result
10 of this case?

11 A. Not to my knowledge.

12 Q. No customers are leaving J.P. Morgan in protest as a result
13 of clearing those six wire transfers?

14 A. Not to my knowledge.

15 Q. And it's true, is it not, that OFAC has provided guidance
16 that makes clear that OFAC would not pursue an enforcement
17 action against J.P. Morgan under circumstances like those in
18 this case?

19 A. No, I don't know that to be true.

20 MR. HEBERLIG: Can we please pull up Defense Exhibit
21 1347 in evidence. Actually, strike that. Can we pull up 1352.

22 Just enlarge that whole section, please.

23 BY MR. HEBERLIG:

24 Q. This is a document that's been admitted in evidence in this
25 case. It is an OFAC Q and A.

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Blair - Cross

1 The question posed -- these are publicly available --
2 is being posed by an intermediate bank.

3 It says: We act as an intermediary bank in wire
4 transfers between other banks.

5 That's the scenario that we have been describing.
6 That's what J.P. Morgan did with respect to the wires in this
7 case, correct?

8 A. Yes.

9 Q. It asks: Does OFAC expects banks that are acting as
10 financial intermediaries to research nonaccount parties that do
11 not appear in the SDN list?

12 Let me stop there. A bank acting as a financial
13 intermediary, that's J.P. Morgan in this case, correct?

14 A. Yes.

15 Q. It's asking whether the bank is expected to research
16 nonaccount parties that do not appear on the SDN list.

17 In this instance the nonaccount parties we are talking
18 about would be PDVSA and Clarity, correct?

19 A. Presumably.

20 Q. OK. It goes on to answer. It gives three conditions about
21 a transaction involving an intermediary bank:

22 1. If the bank is operating solely as an
23 intermediary.

24 In this case in the transactions we are talking about,
25 that was the role that JP played, correct?

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Blair - Cross

1 A. Yes.

2 Q. 2. The bank does not have any direct relationship with the
3 entity, the entity being the nonaccount party.

4 That is also true of transactions we are talking
5 about, correct?

6 A. Correct.

7 Q. 3. The bank does not know or have reason to know the
8 entity's ownership or other information demonstrating the
9 blocked status of the entity's property.

10 Interpreting that, that means no reason to know there
11 is an SDN involved, correct?

12 A. Presumably.

13 Q. OK. OFAC goes on to say: In instances where all three
14 conditions are met, notwithstanding the blocked status, the SDN
15 status of the wire transfer, OFAC would not expect the bank to
16 research the nonaccount parties listed in the wire transfers
17 that do not appear in on the SDN list.

18 We've already talked about that. J.P. Morgan didn't
19 do that, correct?

20 A. Not to my knowledge.

21 Q. OK. Accordingly, if all three conditions are met, as we
22 just established that they were in this case, OFAC would not
23 pursue an enforcement action against the bank for having
24 processed such a transaction.

25 Is that correct?

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Blair - Cross

1 A. That's the way I read it.

2 MR. HEBERLIG: We can take that down.

3 THE COURT: Mr. Heberlig, how long?

4 MR. HEBERLIG: Five to ten minutes.

5 THE COURT: All right.

6 MR. HEBERLIG: Do you want me to continue?

7 THE COURT: Yes.

8 MR. HEBERLIG: OK.

9 THE COURT: Let's shoot for five.

10 MR. HEBERLIG: I will do my best.

11 I am flipping ahead.

12 MS. LAKE: Your Honor, we will have at least 15
13 minutes of redirect, just in terms of the timing for this
14 witness. So we would expect to do that tomorrow based on the
15 time.

16 THE COURT: All right.

17 Why don't you finish, Mr. Heberlig.

18 MR. HEBERLIG: I will do my best.

19 THE COURT: I told the jury half day tomorrow, so we
20 can go a little bit longer to enable that.

21 MR. HEBERLIG: No problem.

22 BY MR. HEBERLIG:

23 Q. I think you testified on direct that one of the -- actually
24 I don't remember. Did you testify on direct about the
25 possibility of the bank being fined as a result of sanctions

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Blair - Cross

1 violations?

2 A. Yes, I did.

3 Q. That was a potential sanction that you described in your
4 direct testimony, correct?

5 A. It is a potential result of violating the sanctions, yes.

6 Q. I didn't mean sanction in the sanction sense. A potential
7 penalty --

8 A. Yes.

9 Q. -- that could be imposed on a bank for violating the
10 sanctions regime, correct?

11 A. Yes.

12 Q. But, again, in the circumstances present here, where the
13 bank had no reason to know of any underlying issue related to
14 Iran, there was no meaningful risk of financial penalty imposed
15 on the bank, isn't that correct?

16 A. From the questionnaire you just showed, I wouldn't think
17 so.

18 Q. That's not the only questionnaire. OFAC has published
19 explicit guidance, am I correct, that foreign correspondent
20 banking transactions involving essentially innocent mistakes
21 will not subject banks to prosecution?

22 MS. LAKE: Objection.

23 THE COURT: Sustained.

24 MR. HEBERLIG: Can we please pull up Defense Exhibit
25 1347 in evidence.

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Blair - Cross

1 BY MR. HEBERLIG:

2 Q. This is a fact sheet published by the essentially the
3 regulators in the banking community.

4 Do you recognize the names that are listed there?

5 A. I do.

6 Q. The Board of Governors of the Federal Reserve, that's a
7 body that regulates banks like J.P. Morgan?

8 A. Yes, it is.

9 Q. Likewise for the FDIC, correct?

10 A. That insures deposits of retail banks.

11 Q. OK. A few others listed there, including the U.S.
12 Department of Treasury, correct?

13 A. Yes, it is.

14 Q. And that's the agency under which OFAC is housed?

15 A. Correct.

16 Q. All right. This is a fact sheet on foreign correspondent
17 banking. Do you see that?

18 A. I do.

19 Q. That's what we have been talking about, right, foreign
20 correspondent banking?

21 A. Yes, it has been.

22 MR. HEBERLIG: OK. If we take that down and just call
23 out that box on page 1.

24 Q. That indicates that the vast majority, about 95 percent, of
25 BSA and OFAC compliance deficiencies identified by the FBA --

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Blair - Cross

1 you know those to be the federal, I think it stands for federal
2 banking authorities?

3 A. I don't, but I believe it.

4 (Continued on next page)

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Blair - Cross

1 BY MR. HEBERLIG:

2 Q. Federal bank agency. It's defined earlier in the page.

3 Do you see it states there that the vast majority,
4 about 95 percent of compliance deficiencies identified by these
5 agencies and OFAC, are corrected by the institution's
6 management without the need for any enforcement action or
7 penalty.

8 Do you see that?

9 A. I do.

10 Q. And if we go to the bottom of page 3, please. The very
11 bottom, carried over to the next page.

12 OFAC's guidance, treasury's guidance says that OFAC
13 investigates cases of sanctions violations, many of which, over
14 95 percent, are closed with administrative measures such as
15 cautionary or no action letters. This means that less than
16 five percent of all cases of sanctions-related violations
17 investigated by OFAC have resulted in civil monetary penalty or
18 other public enforcement response.

19 Is that your understanding?

20 A. No, it wasn't.

21 Q. You had a different view than OFAC and the banking
22 regulators about the number of cases that lead to financial
23 penalty?

24 MS. LAKE: Objection.

25 THE COURT: Sustained.

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Blair - Cross

1 Q. You do know that the risk of criminal enforcement of the
2 bank in this case was non-existent?

3 A. I don't know that.

4 Q. Sorry?

5 A. I don't know that.

6 Q. Let's go to page 3.

7 Sitting here, you believe that there was a meaningful
8 possibility of criminal enforcement of the bank?

9 MS. LAKE: Objection.

10 MR. HEBERLIG: He said he didn't know.

11 MS. LAKE: Mischaracterizes the testimony.

12 THE COURT: Sustained.

13 Q. Do you believe that JP Morgan was at meaningful risk of
14 criminal prosecution for its conduct in this case?

15 MS. LAKE: Objection, foundation.

16 THE COURT: Sustained.

17 Q. Page 3, please, the guidance about criminal enforcement.

18 Financial institutions may also be subject to criminal
19 enforcement by the U.S. Department of Justice. However, it
20 goes on to state, those cases are typically brought against
21 financial institutions only when there is sufficient evidence
22 of willful wrongdoing.

23 Did I read that accurately?

24 A. Yes.

25 Q. Are you aware of any conduct in this case involving willful

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Blair - Cross

1 wrongdoing by JP Morgan?

2 MS. LAKE: Objection.

3 THE COURT: Sustained.

4 MR. HEBERLIG: You can take that down.

5 Q. You did talk -- last question. You talked about I think
6 the process that you went through when there are these reviews
7 of blocked transactions and the manpower involved.

8 A. Yes.

9 Q. Just briefly state again what that process entailed.

10 A. So if a transaction is blocked by a downstream institution,
11 JP Morgan would be notified of the transaction, what action is
12 being taken, JP Morgan would investigate what happened at JP
13 Morgan to that transaction.

14 Q. That would involve manhours and cost and resources,
15 correct?

16 A. Correct.

17 Q. And that would be the case when there was a blocked
18 transaction downstream, correct?

19 A. Yes.

20 Q. And a blocked transaction is one involving an SDN or
21 government of Iran, correct?

22 A. Yes.

23 Q. So a transaction that did not involve the government of
24 Iran or an SDN and was just rejected and returned to the
25 banking party, there would be no such review with the hours,

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1 correct?

2 A. Well, if it was returned to JP Morgan they would have been
3 notified.

4 Q. Not returned to JP Morgan, JP Morgan just returned the
5 payment to its customer; no need for that extended manpower
6 review, correct?

7 A. Well, if JP Morgan is doing it itself, they wouldn't need
8 to investigate it.

9 Q. What do you mean by doing it itself?

10 A. If JP Morgan rejects a payment because of lack of response
11 on an investigation, then JP Morgan wouldn't further
12 investigate it because they know it happened.

13 Q. Fair enough. If one of your downstream banking partners
14 decided to reject a payment as opposed to block it, you might
15 not even know about that, correct?

16 A. We may not.

17 Q. And you certainly wouldn't have to incur those manhours and
18 time to do an investigation because that downstream bank would
19 send the money bank to the party, right?

20 A. Yes.

21 MR. HEBERLIG: Nothing further.

22 THE COURT: Thank you.

23 MS. LAKE: You need more than five minutes?

24 MS. LAKE: Yes, your Honor.

25 THE COURT: We will stop for the night.

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1 Members of the jury, we have more space. It was an
2 eventful day, and I thank you for your diligence and patience
3 and staying a little later today to enable us to do the half
4 day tomorrow. See you ready to go at 9:30. I remind you all
5 of the rules I gave in the beginning of the case, and I ask you
6 to continue to comply with them, as I know you are.

7 Have a good night.

8 (Jury not present)

9 THE COURT: Matters to take up.

10 MR. KROUSE: Your Honor, we will, as always, tell the
11 defense who we're planning to call tomorrow and the exhibits we
12 plan to put in.

13 THE COURT: Just so I understand, obviously the list
14 may narrow, but the plan is everyone but Mr. Dubowitz, correct?

15 MR. KROUSE: Yes. So we'll finish with Mr. Blair,
16 we'll have a paralegal on the stand to go through a lot of just
17 the nuts and bolts payment evidence, payment letters and things
18 of that nature. We'll offer the payment chart after consulting
19 with the defense. And once they're assured that the chart is
20 an accurate summary of the evidence, then we have Mr. Peri, who
21 is from Citibank. He will be providing similar testimony but
22 with respect to the Citibank transactions at issue in this
23 case.

24 With Mr. Blair, defense counsel provided a few
25 exhibits that they thought they might use. They ended up only

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1 using the two that were admitted during Mr. Kim's
2 cross-examination that your Honor allowed, but we don't know if
3 there are other exhibits they may try to use with Mr. Peri, so
4 if we set a schedule just for the defense to provide us any
5 defense exhibits beyond what has already been admitted that
6 they make seek to use with Mr. Peri.

7 MR. HEBERLIG: I will double-check, but I believe what
8 produced last night was for both. If there's anything more, I
9 will provide it by 7 o'clock.

10 THE COURT: Okay.

11 MR. KROUSE: So my colleague says that we may have
12 objections to some of the ones that were provided last night
13 that weren't admitted or offered by the defense, so we'll
14 consult with defense counsel if they still intend to use those
15 with Mr. Peri, and we may have some objections to flag for the
16 Court.

17 THE COURT: All right.

18 MR. HEBERLIG: I had some ready to go today but he
19 gave me the answers I wanted. I don't know that I will seek to
20 admit them. They're more for refreshing and getting him to
21 focus on certain standards, but I will reevaluate tonight and
22 let them know if it's still an issue.

23 THE COURT: So let's say the same basic schedule, so
24 for everything that we're talking about, disclosures by 7:00,
25 objections by 9:00, responses by 11:00. And let's put the

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1 summary chart on the same schedule.

2 What else?

3 MR. HEBERLIG: Does the government intend to admit the
4 chart or is it a demonstrative?

5 MR. KROUSE: We're seeking to admit it through Rule
6 1006.

7 THE COURT: The person traveling, Mr. Krouse, the
8 person --

9 MR. KROUSE: That's Mr. Peri. He's here in New York,
10 my understanding.

11 THE COURT: I was thinking to ensure he gets done by
12 the end of the half day, maybe he should go second.

13 MR. KROUSE: That's fine, your Honor.

14 THE COURT: So it will be Blair, finishing Blair,
15 Peri, the paralegal, and I've encouraged it and I really do try
16 to get out of the way, but reading Turkish into the record,
17 Mr. Krouse, is a good example of when I'm going to start
18 bringing down the hammer.

19 MR. KROUSE: I understand, your Honor, and that was
20 inadvertent.

21 THE COURT: Really, really, it's in the record, use it
22 in closing, flash it on the screen, you don't have to go
23 through everything.

24 MR. KROUSE: Understood, your Honor. It is a
25 document-heavy case, but I think the government has tried to

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1 trim down significantly, and I think we're moving at a good
2 pace.

3 THE COURT: But you did try to read Turkish.

4 MR. KROUSE: Yeah, and I won't do it again.

5 MS. LAKE: It was just to show off his excellent
6 pronunciation.

7 THE COURT: Showing off is not the impression.

8 So Peri, the paralegal, who you will do everything
9 within your power to cut down so I don't have to keep inquiring
10 as to how long.

11 And then after the paralegal?

12 MR. KROUSE: I think that will take us through the
13 half day.

14 THE COURT: There was a Ms. Conte mentioned yesterday.

15 MR. KROUSE: She's another fact witness who need to
16 travel not super far, but she's a lay witness. I think if we
17 try to bring her, I doubt she would go on tomorrow, so I think
18 our view is that we could -- she's very short. We could put
19 her on first thing in the morning on Monday even before
20 Mr. Dubowitz, if he appears, and then probably show a few
21 documents and rest.

22 So I'm very confident that with what we have on the
23 list we can fill the day. We also do have another set of
24 final -- second to final set of documents to put in through the
25 paralegal, and if need arises we will fill the day without

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1 Ms. Conte.

2 THE COURT: You'll fill the half day.

3 MR. KROUSE: Yes, we'll fill the half day.

4 THE COURT: All right. What else?

5 So to be safe, I actually think we should -- I don't
6 know what is going to come in tonight. We didn't leave
7 ourselves enough time this morning to resolve the issues, so
8 8:30 tomorrow. And if nothing comes in, I'll put out an order
9 and let the court reporters and everyone know that we won't
10 start until 9:00, but let's assume 8:30 since something could
11 come in, and if you could communicate and work it out we'll
12 switch to 9:00.

13 Anything else?

14 MR. KROUSE: No, your Honor.

15 THE COURT: Okay, we'll be here. I think we've kept
16 control of this courtroom throughout the duration, so we'll be
17 here. Thank you.

18 (Adjourned to March 6, 2020 at 8:30 a.m.)

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16 GOVERNMENT EXHIBITS

17	Exhibit No.	Received
18	104D	661
19	104D 1401A-T, 1403T, 1405T, 1501T,	662
20	1503T, 1503A-T, 1506A-T.	
21	1601T, 2032T, 2034T, 2034B-T,	
22	2034C-T, 2090T, 2090A-T,	
23	2149T, 2187T, 2237T, 2269A-T,	
24	2269B-T, 2269C-T, 2269D-T,	
25	2269E-T, 2269F-T, 2269G-T,	

2269H-T, 2271T, 2271A-T, and

2276T

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2190, 2198, 2199, 2201, 2201A,

2215, 2215A, 2215A-T, 2215B,

2215B-T, 2215C, 2215C-T, 2217,

2219, 2219A through M

DEFENDANT EXHIBITS

Exhibit No. Received